

raised by the State of California in the present case must, like other claims, be asserted in the patent proceedings or be barred.

[3] These decisions control the outcome of this case. We hold that California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in proceedings taken pursuant to the Act of 1851. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest, like the Indian claims made in *Barker* and in *United States v. Title Ins. & Trust Co.*, must have been presented in the patent proceeding or be barred. Accordingly, the judgment of the Supreme Court of California is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice MARSHALL took no part in the decision of this case.



466 U.S. 210, 80 L.Ed.2d 247

**IMMIGRATION AND
NATURALIZATION
SERVICE et al.**

v.

Herman DELGADO et al.

No. 82-1271.

Argued Jan. 11, 1984.

Decided April 17, 1984.

Factory workers brought action to enjoin INS from conducting "factory surveys." The United States District Court for the Central District of California denied

relief and factory workers appealed. The Court of Appeals for the Ninth Circuit, 681 F.2d 624, reversed. The Supreme Court, Justice Rehnquist, held that: (1) actions of INS agents in moving systematically through factory to inquire as to workers' citizenship while INS agents were stationed at each exit did not amount to Fourth Amendment seizure of the entire work force of the factory, and (2) questioning of individual workers did not amount to a seizure or detention for Fourth Amendment purposes.

Reversed.

Justice Stevens filed a concurring opinion.

Justice Powell filed an opinion concurring in the result.

Justice Brennan filed an opinion concurring in part and dissenting in part in which Justice Marshall joined.

1. Arrest ⇐63.5(1)

Fourth Amendment does not proscribe all contact between the police and citizens, but is designed to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals. U.S.C.A. Const. Amend. 4.

2. Arrest ⇐68(4)

Initially consensual encounter between police officer and citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. U.S.C.A. Const. Amend. 4.

3. Arrest ⇐63.5(1)

Fact that most citizens will respond to a police request and that most do so without being told that they are free not to respond does not eliminate the consensual nature of such responses.

4. Arrest ⇐63.5(7)

Unless circumstances of encounter with police are so intimidating as to demon-

strate that a reasonable person would have believed that he was not free to leave if he did not respond, questioning does not result in detention under the Fourth Amendment; if the person refuses to answer and the police take additional steps to obtain an answer, the Fourth Amendment imposes some minimal level of objective justification to validate the detention or seizure. U.S. C.A. Const.Amend. 4.

5. Arrest ⇐66(1)

Where police officers are lawfully present in a private place pursuant to consent or warrant, same Fourth Amendment considerations attending contacts between the police and citizens in public places apply.

6. Arrest ⇐68(4)

Actions of INS agents in conducting "factory survey" by systematically moving through factory and asking all employees their citizenship while INS agents were stationed at each exit did not amount to a seizure of the entire work force for purposes of Fourth Amendment. U.S.C.A. Const.Amend. 4.

7. Arrest ⇐68(4)

Action of INS agents in moving systematically through factory and asking each worker his or her citizenship and asking to see the papers of aliens did not amount to seizures or detentions of the individual workers. U.S.C.A. Const. Amend. 4.

Syllabus *

Acting pursuant to warrants issued on a showing of probable cause that numerous unidentified illegal aliens were employed at a garment factory, the Immigration and Naturalization Service (INS) conducted two "factory surveys" of the work force in search of illegal aliens. A third factory survey was conducted with the employer's consent at another garment factory. During each survey, which lasted from one to

two hours, INS agents positioned themselves near the factory exits, while other agents moved systematically through the factory, approaching employees and, after identifying themselves, asking the employees from one to three questions relating to their citizenship. If an employee gave a credible reply that he was a United States citizen or produced his immigration papers, the agent moved on to another employee. During the survey, employees continued with their work and were free to walk around within the factory. Respondent employees—who were United States citizens or permanent resident aliens, and who had been questioned during the surveys—and their union filed actions, consolidated in Federal District Court, alleging that the factory surveys violated their Fourth Amendment rights, and seeking declaratory and injunctive relief. The District Court granted summary judgment for the INS, but the Court of Appeals reversed, holding that the surveys constituted a seizure of the entire work forces, and that the INS could not question an individual employee unless its agents had a reasonable suspicion that the employee was an illegal alien.

Held: The factory surveys did not result in the seizure of the entire work forces, and the individual questioning of the respondent employees by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Pp. 1762-1765.

(a) Interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure. Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, such questioning does not result in a detention under the Fourth Amendment. Pp. 1762-1763.

(b) The entire work forces of the factories were not seized for the duration of the

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

surveys here, even though INS agents were placed near ¹²¹the exits of the factory sites. The record indicates that the agents' conduct consisted simply of questioning employees and arresting those they had probable cause to believe were unlawfully present in the factory. This conduct should not have given respondents, or any other citizens or aliens lawfully present in the factories, any reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer. If mere questioning did not constitute a seizure when it occurred inside the factory, it was no more a seizure when it occurred at the exits. Pp. 1763-1764.

(c) Since there was no seizure of the work forces by virtue of the method of conducting the surveys, the issue of individual questioning could be presented only if one of the respondent employees had in fact been seized or detained, but their deposition testimony showed that none were. They may only litigate what happened to them, and their description of the encounters with the INS agents showed that the encounters were classic consensual encounters rather than Fourth Amendment seizures. Pp. 1764-1765.

681 F.2d 624 (9th Cir.1982), reversed.

Andrew L. Frey, Washington, D.C., for petitioners.

Henry R. Fenton, Los Angeles, for respondents.

Justice REHNQUIST delivered the opinion of the Court.

In the course of enforcing the immigration laws, petitioner Immigration and Naturalization Service (INS) enters employers' worksites to determine whether any illegal aliens ¹²²may be present as employees. The Court of Appeals for the Ninth Circuit held that the "factory surveys" involved in this case amounted to a seizure of the entire work forces, and further held that the INS could not question individual employees during any of these surveys unless

its agents had a reasonable suspicion that the employee to be questioned was an illegal alien. *International Ladies' Garment Worker's Union, AFL-CIO v. NLRB*, 681 F.2d 624 (9th Cir.1982). We conclude that these factory surveys did not result in the seizure of the entire work forces, and that the individual questioning of the respondents in this case by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals.

Acting pursuant to two warrants, in January and September, 1977 the INS conducted a survey of the work force at Southern California Davis Pleating Co. (Davis Pleating) in search of illegal aliens. The warrants were issued on a showing of probable cause by the INS that numerous illegal aliens were employed at Davis Pleating, although neither of the search warrants identified any particular illegal aliens by name. A third factory survey was conducted with the employer's consent in October, 1977, at Mr. Pleat, another garment factory.

At the beginning of the surveys several agents positioned themselves near the buildings' exits, while other agents dispersed throughout the factory to question most, but not all, employees at their work stations. The agents displayed badges, carried walkie-talkies, and were armed, although at no point during any of the surveys was a weapon ever drawn. Moving systematically through the factory, the agents approached employees and, after identifying themselves, asked them from one to three questions relating to their citizenship. If the employee gave a credible reply that he was a United States citizen, the questioning ended, and the agent moved on to another employee. If the employee gave an unsatisfactory ²¹³response or admitted that he was an alien, the employee was asked to produce his immigration papers. During the survey, employees

continued with their work and were free to walk around within the factory.

Respondents are four employees questioned in one of the three surveys.¹ In 1978 respondents and their union representative, the International Ladies Garment Workers' Union, filed two actions, later consolidated, in the United States District Court for the Central District of California challenging the constitutionality of INS factory surveys and seeking declaratory and injunctive relief. Respondents argued that the factory surveys violated their Fourth Amendment right to be free from unreasonable searches or seizures and the equal protection component of the Due Process Clause of the Fifth Amendment.

The District Court denied class certification and dismissed the union from the action for lack of standing, App. to Pet. for Cert. 58a-60a. In a series of cross-motions for partial summary judgment, the District Court ruled that respondents had no reasonable expectation of privacy in their workplaces which conferred standing on them to challenge entry by the INS pursuant to a warrant or owner's consent. *Id.*, at 49a-52a, 53a-55a, 56a-57a. In its final ruling the District Court addressed respondents' request for injunctive relief directed at preventing the INS from questioning them personally during any future surveys. The District Court, with no material facts in dispute, found that each of the four respondents was asked a question or questions by an INS agent during one of the factory surveys. *Id.*, at 46a. Reasoning from this Court's decision in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), that law enforcement officers may ask questions of anyone, the District Court ruled that none of the respondents

had been detained under the Fourth Amendment during the factory surveys, either when they were questioned or otherwise. App. to Pet. for Cert. 47a. Accordingly, it granted summary judgment in favor of the INS.²

The Court of Appeals reversed. Applying the standard first enunciated by a Member of this Court in *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) (opinion of Stewart, J.), the Court of Appeals concluded that the entire work forces were seized for the duration of each survey, which lasted from one to two hours, because the stationing of agents at the doors to the buildings meant that "a reasonable worker 'would have believed that he was not free to leave.'" 681 F.2d, at 634 (quoting *United States v. Anderson*, 663 F.2d 934, 939 (CA9 1981)). Although the Court of Appeals conceded that the INS had statutory authority to question any alien or person believed to be an alien as to his right to be or remain in the United States, see 66 Stat. 233, 8 U.S.C. § 1357(a)(1), it further held that under the Fourth Amendment individual employees could be questioned only on the basis of a reasonable suspicion that a particular employee being questioned was an alien illegally in the country. 681 F.2d, at 639-645. A reasonable suspicion or probable cause to believe that a number of illegal aliens were working at a particular factory site was insufficient to justify questioning any individual employee. *Id.*, at 643. Consequently, it also held that the individual questioning of respondents violated the Fourth Amendment because there had been no such reasonable suspicion or probable cause as to any of them.³

1. Respondents Herman Delgado, Ramona Correa, and Francisca Labonte worked at Davis Pleating, while Marie Miramontes, the fourth respondent, was employed by Mr. Pleat. Both Delgado and Correa are United States citizens, while Labonte and Miramontes are permanent resident aliens.

2. The District Court never ruled directly on respondents' Fifth Amendment claim, apparently reasoning that since respondents' Fourth

Amendment rights had not been violated, their Fifth Amendment right had also not been violated. The Court of Appeals also never ruled on respondents' Fifth Amendment claim, and we decline to do so.

3. The Court of Appeals ruled that the District Court did not abuse its discretion in denying class certification. In light of its disposition of respondents' Fourth Amendment claims, the Court of Appeals declined to resolve the union's

¹²¹⁵We granted certiorari to review the decision of the Court of Appeals, 461 U.S. 904, 103 S.Ct. 1872, 76 L.Ed.2d 805 (1983), because it has serious implications for the enforcement of the immigration laws and presents a conflict with the decision reached by the Third Circuit in *Babula v. INS*, 665 F.2d 293 (1981).

[1, 2] The Fourth Amendment does not proscribe all contact between the police and citizens, but is designed "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *United States v. Martinez-Fuerte*, 428 U.S. 543, 554, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116 (1976). Given the diversity of encounters between police officers and citizens, however, the Court has been cautious in defining the limits imposed by the Fourth Amendment on encounters between the police and citizens. As we have noted elsewhere: "Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, *supra*, 392 U.S., at 19, n. 16, 88 S.Ct., at 1879 n. 16. While applying such a test is relatively straightforward in a situation resembling a traditional arrest, see *Dunaway v. New York*, 442 U.S. 200, 212-216, 99 S.Ct. 2248, 2256-2258, 60 L.Ed.2d 824 (1979), the protection against unreasonable seizures also extends to "seizures that involve only a brief detention short of traditional arrest." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975). What has evolved from our cases is a determination that an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment, "if, in view of all the circumstances surrounding the incident, a reasonable per-

son would have believed that he was not free to leave." *Mendenhall*, *supra*, 446 U.S. at 554, 100 S.Ct., at 1877 (footnote omitted); see *Florida v. Royer*, 460 U.S. 491, 502, 103 S.Ct. 1319, 1326, 75 L.Ed.2d 229 (1983) (plurality opinion).

¹²¹⁶Although we have yet to rule directly on whether mere questioning of an individual by a police official, without more, can amount to a seizure under the Fourth Amendment, our recent decision in *Royer*, *supra*, plainly implies that interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure. In *Royer*, when Drug Enforcement Administration agents found that the respondent matched a drug courier profile, the agents approached the defendant and asked him for his airplane ticket and driver's license, which the agents then examined. A majority of the Court believed that the request and examination of the documents were "permissible in themselves." *Id.*, at 501, 103 S.Ct., at 1326 (plurality opinion), see *id.*, at 523, n. 3, 103 S.Ct., at 1337-1338, n. 3 (opinion of REHNQUIST, J.). In contrast, a much different situation prevailed in *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979), when two policemen physically detained the defendant to determine his identity, after the defendant refused the officers' request to identify himself. The Court held that absent some reasonable suspicion of misconduct, the detention of the defendant to determine his identity violated the defendant's Fourth Amendment right to be free from an unreasonable seizure. *Id.*, at 52, 99 S.Ct. at 2641.

[3, 4] What is apparent from *Royer* and *Brown* is that police questioning, by itself, is unlikely to result in a Fourth Amendment violation. While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the re-

appeal from the District Court's determination that the union lacked standing to raise its mem-

bers' Fourth Amendment claims. 681 F.2d, at 645, n. 24.

sponse. Cf. *Schneckloth v. Bustamonte*, 412 U.S. 218, 231-234, 93 S.Ct. 2041, 2049-2051, 36 L.Ed.2d 854 (1973). Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment. But if the persons refuses to answer and the police take additional steps—such as those taken in *Brown*—to obtain an answer, then the Fourth Amendment imposes ¹²¹⁷some minimal level of objective justification to validate the detention or seizure. *United States v. Mendenhall*, 446 U.S., at 554, 100 S.Ct., at 1877; see *Terry v. Ohio*, 392 U.S., at 21, 88 S.Ct., at 1879.

[5] The Court of Appeals held that “the manner in which the factory surveys were conducted in this case constituted a seizure of the workforce” under the Fourth Amendment. 681 F.2d, at 634. While the element of surprise and the systematic questioning of individual workers by several INS agents contributed to the court’s holding, the pivotal factor in its decision was the stationing of INS agents near the exits of the factory buildings. According to the Court of Appeals, the stationing of agents near the doors meant that “departures were not to be contemplated,” and thus, workers were “not free to leave.” *Ibid.* In support of the decision below, respondents argue that the INS created an intimidating psychological environment when it intruded unexpectedly into the workplace with such a show of officers.⁴

4. Although the issue was the subject of substantial discussion at oral argument, the INS does not contest that respondents have standing to bring this case. They allege the existence of an ongoing policy which violated the Fourth Amendment and which will be applied to their workplace in the future. Cf. *Allee v. Medrano*, 416 U.S. 802, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974). Part of their argument is clearly based on the INS’s detention of illegal aliens found working at the two factories. Respondents, however, can only premise their right to injunctive relief on their individual encounters with INS agents during the factory surveys. See *infra*, at 1765.

104A S.Ct.—3

Besides the stationing of agents near the exits, respondents add that the length of the survey and the failure to inform workers they were free to leave resulted in a Fourth Amendment seizure of the entire work force.⁵

[6] ¹²¹⁸We reject the claim that the entire work forces of the two factories were seized for the duration of the surveys when the INS placed agents near the exits of the factory sites. Ordinarily, when people are at work their freedom to move about has been meaningfully restricted, not by the actions of law enforcement officials, but by the workers’ voluntary obligations to their employers. The record indicates that when these surveys were initiated, the employees were about their ordinary business, operating machinery and performing other job assignments. While the surveys did cause some disruption, including the efforts of some workers to hide, the record also indicates that workers were not prevented by the agents from moving about the factories.

Respondents argue, however, that the stationing of agents near the factory doors showed the INS’s intent to prevent people from leaving. But there is nothing in the record indicating that this is what the agents at the doors actually did. The obvious purpose of the agents’ presence at the factory doors was to insure that all persons in the factories were questioned. The record indicates that the INS agents’ conduct in this case consisted simply of questioning employees and arresting those they had probable cause to believe were unlaw-

5. Contrary to respondents’ assertion, it also makes no difference in this case that the encounters took place inside a factory, a location usually not accessible to the public. The INS officers were lawfully present pursuant to consent or a warrant, and other people were in the area during the INS agents’ questioning. Thus, the same considerations attending contacts between the police and citizens in public places should apply to the questions presented to the individual respondents here.

fully present in the factory. This conduct should have given respondents no reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer. If mere questioning does not constitute a seizure when it occurs inside the factory, it is no more a seizure when it occurs at the exits.⁶

¹²¹⁹A similar conclusion holds true for all other citizens or aliens lawfully present inside the factory buildings during the surveys. The presence of agents by the exits posed no reasonable threat of detention to these workers while they walked throughout the factories on job assignments. Likewise, the mere possibility that they would be questioned if they sought to leave the buildings should not have resulted in any reasonable apprehension by any of them that they would be seized or detained in any meaningful way. Since most workers could have had no reasonable fear that they would be detained upon leaving, we conclude that the work forces as a whole were not seized.⁷

[7] The Court of Appeals also held that "detentive questioning" of individuals could be conducted only if INS agents could articulate "objective facts providing investigators with a reasonable suspicion that each questioned person, so detained, is an alien illegally in this country." 681 F.2d, at 638. Under our analysis, however, since there was no seizure of the work forces by virtue of the method of conducting the factory surveys, the only way the issue of individual questioning could be presented would be if one of the named

respondents had in fact been seized or detained. Reviewing the deposition testimony of respondents, we conclude that none were.

The questioning of each respondent by INS agents seems to have been nothing more than a brief encounter. None of the three Davis Pleating employees were questioned during the January survey. During the September survey at Davis Pleating, respondent Delgado was discussing the survey with another employee when two INS agents approached him and asked him where he was from and from what city. When Delgado informed them that he came from Mayaguez, Puerto Rico, the agent made an innocuous observation to his partner and left. App. 94. Respondent Correa's experience in the September survey was similar. Walking from one part of the factory to another, Correa was stopped by an INS agent and asked where she was born. When she replied "Huntington Park, [California]," the agent walked away and Correa continued about her business. *Id.*, 115. Respondent Labonte, the third Davis Pleating employee, was tapped on the shoulder and asked in Spanish, "Where are your papers?" *Id.*, 138. Labonte responded that she had her papers and without any further request from the INS agents, showed the papers to the agents, who then left. Finally, respondent Miramontes, the sole Mr. Pleat employee involved in this case, encountered an agent en route from an office to her worksite. Questioned concerning her citizenship, Miramontes replied that she was a resident alien, and on the

6. In her deposition respondent Miramontes described an incident that occurred during the October factory survey at Mr. Pleat, in which an INS agent stationed by an exit attempted to prevent a worker, presumably an illegal alien, from leaving the premises after the survey started. The worker walked out the door and when an agent tried to stop him, the worker pushed the agent aside and ran away. App. 125-126. An ambiguous, isolated incident such as this fails to provide any basis on which to conclude that respondents have shown an INS policy entitling them to injunctive relief. See *Rizzo v. Goode*, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d

561 (1976); cf. *Allee v. Medrano*, *supra*; *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939).

7. Respondents Delgado and Labonte both left the building during the INS survey, Delgado to load a truck and Labonte to observe INS activities outside the building. App. 98, 136. Neither of them stated in their depositions that the INS agents in any way restrained them from leaving the building, or even addressed any questions to them upon leaving.

agent's request, produced her work permit. The agent then left. *Id.*, at 120-121.

Respondents argue that the manner in which the surveys were conducted and the attendant disruption caused by the surveys created a psychological environment which made them reasonably afraid they were not free to leave. Consequently, when respondents were approached by INS agents and questioned concerning their citizenship and right to work, they were effectively detained under the Fourth Amendment, since they reasonably feared that refusing to answer would have resulted in their arrest. But it was obvious from the beginning of the surveys that the INS agents were only questioning people. Persons such as respondents who simply went about their business in the workplace were not detained in any way; nothing more occurred than that a question was put to them. While persons who attempted to flee or evade the agents may eventually have been detained for questioning, see *d.*, at 50, 81-84, 91-93, respondents did not do so and were not in fact detained. The manner in which respondents were questioned, given its obvious purpose, could hardly result in a reasonable fear that respondents²²¹ were not free to continue working or to move about the factory. Respondents may only litigate what happened to them, and our review of their description of the encounters with the INS agents satisfies us that the encounters were classic consensual encounters rather than Fourth Amendment seizures. See *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983); *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

Accordingly, the judgment of the Court of Appeals is

Reversed.

Justice STEVENS, concurring.

A trial has not yet been held in this case. The District Court entered summary judgment

against respondents, and the Court of Appeals, in reversing, did not remand the case for trial but rather directed the District Court to enter summary judgment for respondents and a permanent injunction against petitioners. As the case comes to us, therefore, we must construe the record most favorably to petitioners, and resolve all issues of fact in their favor. Because I agree that this record is insufficient to establish that there is no genuine issue of fact on the question whether any of the respondents could have reasonably believed that he or she had been detained in some meaningful way, I join the opinion of the Court.

Justice POWELL, concurring in the result.

While the Court's opinion is persuasive, I find the question of whether the factory surveys conducted in this case resulted in any Fourth Amendment "seizures" to be a close one. The question turns on a difficult characterization of fact and law: whether a reasonable person in respondents' position would have believed he was free to refuse to answer the questions put to him by INS officers and leave the factory. I believe that the Court need not decide the question, however, because it is clear that any "seizure" that may have taken place was permissible under the reasoning of our decision in *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976).

²²²In that case, we held that stopping automobiles for brief questioning at permanent traffic checkpoints away from the Mexican border is consistent with the Fourth Amendment and need not be authorized by a warrant.¹ We assumed that the stops constituted "seizures" within the meaning of the Fourth Amendment, see *id.*, at 546, n. 1, 96 S.Ct., at 3078, n. 1, 556, 96 S.Ct., 3082, but upheld them as reasonable. As in prior cases involving the apprehension of aliens illegally in the United

1. This case presents no question as to whether a warrant was required for the entry by the INS officers into the plants. As the majority notes,

the INS obtained either a warrant or consent from the factory owners before entering the plants to conduct the surveys.

States, we weighed the public interest in the practice at issue against the Fourth Amendment interest of the individual. See *id.*, at 555, 96 S.Ct., at 3081. Noting the importance of routine checkpoint stops to controlling the flow of illegal aliens into the interior of the country, we found that the Government had a substantial interest in the practice. On the other hand, the intrusion on individual motorists was minimal: the stops were brief, usually involving only a question or two and possibly the production of documents. Moreover, they were public and regularized law enforcement activities vesting limited discretion in officers in the field. Weighing these considerations, we held that the stops and questioning at issue, as well as referrals to a slightly longer secondary inspection, might be made "in the absence of any individualized suspicion" that a particular car contained illegal aliens, *id.*, at 562, 96 S.Ct., at 3085.

This case is similar. The Government's interest in using factory surveys is as great if not greater. According to an affidavit by the INS's Assistant District Director in Los Angeles contained in the record in this case, the surveys account for one-half to three-quarters of the illegal aliens identified and arrested away from the border every day in the Los Angeles District. App. 47.² In that District alone, over ¹²²³20,000 illegal aliens were arrested in the course of factory surveys in one

year. *Id.*, at 44. The surveys in this case resulted in the arrest of between 20% and 50% of the employees at each of the factories.³

We have noted before the dimensions of the immigration problem in this country. *E.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 878-879, 95 S.Ct. 2574, 2578-2579, 45 L.Ed.2d 607 (1975); *Martinez-Fuerte*, *supra*, 428 U.S., at 551-553, 96 S.Ct., at 3080-3081. Recent estimates of the number of illegal aliens in this country range between 2 and 12 million, although the consensus appears to be that the number at any one time is between 3 and 6 million.⁴ One of the main reasons they come—perhaps the main reason—is to seek employment. See App. 43; *Martinez-Fuerte*, *supra*, at 551, 96 S.Ct., at 3080; Select Committee, at 25, 38. Factory surveys strike directly at this cause, enabling the INS with relatively few agents to diminish the incentive for the dangerous passage across the border and to apprehend large numbers of those who come. Clearly, the Government interest in this enforcement technique is enormous.⁵

¹²²⁴The intrusion into the Fourth Amendment interests of the employees, on the other hand, is about the same as it was in *Martinez-Fuerte*. The objective intrusion is actually less: there, cars often were stopped for up to five minutes, while here employees could continue their work as the survey progressed. They were diverted

2. The Solicitor General informs us that the figure in text refers to 1977. For the country as a whole, the INS estimates from its internal records that factory surveys accounted in 1982 for approximately 60% of all illegal aliens apprehended by the INS in nonborder locations. Brief for Petitioners 3-4, and n. 3.

3. During the course of the first survey at Davis Pleating, 78 illegal aliens were arrested out of a work force of approximately 300. The second survey nine months later resulted in the arrest of 39 illegal aliens out of about 200 employees. The survey at Mr. Pleat resulted in the arrest of 45 illegal aliens out of approximately 90 employees. App. 51.

4. House Select Committee on Population, 95th Cong., 2d Sess., Legal and Illegal Immigration

to the United States 2, 16-17 (Comm.Print 1978) (hereinafter Select Committee); see also *Brignoni-Ponce*, 422 U.S., at 878, 95 S.Ct., at 2578 (the INS in 1974 suggested that the number of illegal aliens might be as high as 10 to 12 million).

5. Despite the vast expenditures by the INS and other agencies to prevent illegal immigration and apprehend aliens illegally in the United States, and despite laws making it a crime for them to be here, our law irrationally continues to permit United States employers to hire them. Many employers actively recruit low-paid illegal immigrant labor, encouraging—with Government tolerance—illegal entry into the United States. See Select Committee, at 25. This incongruity in our immigration statutes is not calculated to increase respect for the rule of law.

briefly to answer a few questions or to display their registration cards. It is true that the initial entry into the plant in a factory survey is a surprise to the workers, but the obviously authorized character of the operation, the clear purpose of seeking illegal aliens, and the systematic and public nature of the survey serve to minimize any concern or fright on the part of lawful employees. Moreover, the employees' expectation of privacy in the plant setting here, like that in an automobile, certainly is far less than the traditional expectation of privacy in one's residence. Therefore, for the same reasons that we upheld the checkpoint stops in *Martinez-Fuerte* without any individualized suspicion, I would find the factory surveys here to be reasonable.⁶

¹²²⁵Justice BRENNAN, with whom Justice MARSHALL joins, concurring in part and dissenting in part.

As part of its ongoing efforts to enforce the immigration laws, the Immigration and Naturalization Service (INS) conducts "surveys" of those workplaces that it has reason to believe employ large numbers of undocumented aliens who may be subject

to deportation. This case presents the question whether the INS's method of carrying out these "factory surveys"¹ violates the rights of the affected factory workers to be secure against unreasonable seizures of one's person as guaranteed by the Fourth Amendment. Answering that question, the Court today holds, first, that the INS surveys involved here did not result in the seizure of the entire factory work force for the complete duration of the surveys, *ante*, at 1763-1764, and, second, that the individual questioning of respondents by INS agents concerning their citizenship did not constitute seizures within the meaning of the Fourth Amendment, *ante*, at 1764-1765. Although I generally agree with the Court's first conclusion,² I am convinced that a fair application of our prior decisions to the facts of this case ¹²²⁶compels the conclusion that respondents were unreasonably seized by INS agents in the course of these factory surveys.

At first blush, the Court's opinion appears unremarkable. But what is striking about today's decision is its studied air of unreality. Indeed, it is only through a considerable feat of legerdemain that the

6. The Court in *Martinez-Fuerte* also held that no particularized reason was necessary to refer motorists to the secondary inspection area for a slightly more intrusive "seizure." 428 U.S., at 563-564, 96 S.Ct., at 3085-3086. Similarly, I would hold in this case that in the context of an overall survey of a factory, no particularized suspicion is needed to justify the choice of those employees who are subjected to the minimal intrusion of the questioning here. The dissent's claim that INS agents have greater discretion to decide whom to question in factory surveys than they do at traffic checkpoints, *post*, at 1774, neglects the virtually unlimited discretion to refer cars to the secondary inspection area that we approved in *Martinez-Fuerte*.

The dissent also suggests that a warrant requirement for factory surveys, and certain unspecified improvements, would make the surveys constitutional. *Post*, at 1774-1775. I note only that the Court in *Martinez-Fuerte* declined to impose a warrant requirement on the location of traffic checkpoints, 428 U.S., at 564-566, 96 S.Ct., at 3085-3086 and that the respondents here do not argue for such a requirement or for changes in the "duration and manner" of the surveys. I would not address the warrant question until it is fully briefed by both sides.

1. The enforcement activities of the INS are divided between "border patrol" operations conducted along the border and its functional equivalents and "area control" operations conducted in the interior of the United States. The INS's area control operations are in turn divided into traffic control operations (such as maintaining fixed checkpoints on major highways) and factory surveys of the kind at issue in this case.

2. It seems to me that the Court correctly finds that there was no single continuing seizure of the entire work force from the moment that the INS agents first secured the factory exists until the completion of the survey. I join the Court's judgment in this respect because it is apparent that in all three factory surveys under review most of the employees were generally free while the survey was being conducted to continue working without interruption and to move about the workplace. Having said that, however, I should emphasize that I find the evidence concerning the conduct of the factory-wide survey highly relevant to determining whether the individual respondents were seized. See *infra*, at 1769-1770.

Court is able to arrive at the conclusion that the respondents were not seized. The success of the Court's sleight of hand turns on the proposition that the interrogations of respondents by the INS were merely brief, "consensual encounters," *ante*, at 1765, that posed no threat to respondents' personal security and freedom. The record, however, tells a far different story.

I

Contrary to the Court's suggestion, see *ante*, at 1762, we have repeatedly considered whether and, if so, under what circumstances questioning of an individual by law enforcement officers may amount to a seizure within the meaning of the Fourth Amendment. See, e.g., *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Davis v. Mississippi*, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969); *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979); *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). Of course, as these decisions recognize, the question does not admit of any simple answer. The difficulty springs from the inherent tension between our commitment to safeguarding the precious, and all too fragile, right to go about one's business free from unwarranted government interference, and our recognition that the police must be allowed some latitude in gathering information from those individuals who are willing to cooperate. Given these difficulties, it is perhaps understandable that our efforts to strike an appropriate balance have not produced uniform results. Nevertheless, the outline of what appears to be the appropriate inquiry has been traced over the years with some clarity.

¹²²⁷The Court launched its examination of this issue in *Terry v. Ohio*, *supra*, by explaining that "the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime—'arrests' in tradi-

tional terminology. *It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person.*" *Id.*, at 16, 88 S.Ct., at 1877 (emphasis added). Such a seizure, the Court noted, may be evidenced by either "physical force or show of authority" indicating that the individual's liberty has been restrained. *Id.*, at 19, n. 16, 88 S.Ct., at 1879, n. 16. The essential teaching of the Court's decision in *Terry*—that an individual's right to personal security and freedom must be respected even in encounters with the police that fall short of full arrest—has been consistently reaffirmed. In *Davis v. Mississippi*, 394 U.S., at 726-727, 89 S.Ct., at 1397-1398, for example, the Court confirmed that investigatory detentions implicate the protections of the Fourth Amendment and further explained that "while the police have the right to request citizens to answer voluntarily questions concerning unsolved crimes they have no right to compel them to answer." *Id.*, at 727, n. 6, 89 S.Ct., at 1397, n. 6. Similarly, in *Brown v. Texas*, *supra*, we overturned a conviction for refusing to stop and identify oneself to police, because, in making the stop, the police lacked any "reasonable suspicion, based on objective facts, that the individual [was] involved in criminal activity." *Id.*, at 51, 99 S.Ct., at 2641. The animating principle underlying this unanimous decision was that the Fourth Amendment protects an individual's personal security and privacy from unreasonable interference by the police, even when that interference amounts to no more than a brief stop and questioning concerning one's identity.

Although it was joined at the time by only one other Member of this Court, Part IIA of Justice Stewart's opinion in *United States v. Mendenhall*, *supra*, offered a helpful, preliminary distillation of the lessons of these cases. Noting ¹²²⁸first that "as long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or pri-

vacy," Justice Stewart explained that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* at 554, 100 S.Ct., at 1877. The opinion also suggested that such circumstances might include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Ibid.*

A majority of the Court has since adopted that formula as the appropriate standard for determining when inquiries made by the police cross the boundary separating merely consensual encounters from forcible stops to investigate a suspected crime. See *Florida v. Royer*, 460 U.S., at 502, 103 S.Ct., at 1326 (plurality opinion); *id.*, at 511-512, 103 S.Ct., at 1331 (BRENNAN, J., concurring in result); *id.*, at 514, 103 S.Ct., at 1333 (BLACKMUN, J., dissenting). This rule properly looks not to the subjective impressions of the person questioned but rather to the objective characteristics of the encounter which may suggest whether or not a reasonable person would believe that he remained free during the course of the questioning to disregard the questions and walk away. See 3 W. LaFare, *Search and Seizure* § 9.2, p. 52 (1978). The governing principles that should guide us in this difficult area were summarized in the *Royer* plurality opinion:

"[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. Nor would the fact that the officer identifies himself as a police officer, without more, convert²²⁹ the encounter into a seizure requiring some level of objective

justification. The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. *He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds.*" 460 U.S., at 497-498, 103 S.Ct., at 1324 (citations omitted) (emphasis added).

Applying these principles to the facts of this case, I have no difficulty concluding that respondents were seized within the meaning of the Fourth Amendment when they were accosted by the INS agents and questioned concerning their right to remain in the United States. Although none of the respondents was physically restrained by the INS agents during the questioning, it is nonetheless plain beyond cavil that the manner in which the INS conducted these surveys demonstrated a "show of authority" of sufficient size and force to overbear the will of any reasonable person. Faced with such tactics, a reasonable person could not help but feel compelled to stop and provide answers to the INS agents' questions. The Court's efforts to avoid this conclusion are rooted more in fantasy than in the record of this case. The Court goes astray, in my view, chiefly because it insists upon considering each interrogation in isolation as if respondents had been questioned by the INS in a setting similar to an encounter between a single police officer and a lone passerby that might occur on a street corner. Obviously, once the Court begins with such an unrealistic view of the facts, it is only a short step to the equally fanciful conclusion that respondents acted voluntarily when they stopped and answered the agents' questions.

The surrounding circumstances in this case are far different from an isolated encounter between the police and a passerby on the street. Each of the respondents testified at length about the widespread disturbance among the workers ¹²³⁰that was sparked by the INS surveys and the

intimidating atmosphere created by the INS's investigative tactics. First, as the respondents explained, the surveys were carried out by surprise by relatively large numbers of agents, generally from 15 to 25, who moved systematically through the rows of workers who were seated at their work stations. See App. 77-78, 81-85, 102-103, 122-123. Second, as the INS agents discovered persons whom they suspected of being illegal aliens, they would handcuff these persons and lead them away to waiting vans outside the factory. See *id.*, at 88, 140-141. Third, all of the factory exits were conspicuously guarded by INS agents, stationed there to prevent anyone from leaving while the survey was being conducted. See *id.*, at 48, 82, 125-126, 144-145, 158. Finally, as the INS agents moved through the rows of workers, they would show their badges and direct pointed questions at the workers. In light of these circumstances, it is simply fantastic to conclude that a reasonable person could ignore all that was occurring throughout the factory and, when the INS agents reached him, have the temerity to believe that he was at liberty to refuse to answer their questions and walk away.

Indeed, the experiences recounted by respondents clearly demonstrate that they did not feel free either to ignore the INS agents or to refuse to answer the questions posed to them. For example, respondent Delgado, a naturalized American citizen, explained that he was standing near his work station when two INS agents approached him, identified themselves as immigration officers, showed him their badges, and asked him to state where he was born. *Id.*, at 95. Delgado, of course, had seen all that was going on around him up to that point and naturally he responded. As a final reminder of who controlled

the situation, one INS agent remarked as they were leaving Delgado that they would be coming back to check him out again because he spoke English too well. *Id.*, at 94. Respondent Miramontes described her encounter with the INS in similar terms: "He ¹²³¹told me he was from Immigration, so when I showed him the [work permit] papers I saw his badge. *If I hadn't [seen his badge], I wouldn't have shown them to him.*" *Id.*, at 121 (emphasis added). She further testified that she was frightened during this interview because "normally you get nervous when you see everybody is scared, everybody is nervous." *Ibid.* Respondent Labontes testified that while she was sitting at her machine an immigration officer came up to her from behind, tapped her on the left shoulder and asked "Where are your papers?" Explaining her response to this demand, she testified: "I turned, *and at the same time I didn't wish to identify myself.* When I saw [the INS agents], I said, 'Yes, yes, I have my papers.'" *Id.*, at 138 (emphasis added).

In sum, it is clear from this testimony that respondents felt constrained to answer the questions posed by the INS agents, even though they did not wish to do so. That such a feeling of constraint was reasonable should be beyond question in light of the surrounding circumstances. Indeed, the respondents' testimony paints a frightening picture of people subjected to wholesale interrogation under conditions designed not to respect personal security and privacy, but rather to elicit prompt answers from completely intimidated workers. Nothing could be clearer than that these tactics amounted to seizures of respondents under the Fourth Amendment.³

¹²³²II

The Court's eagerness to conclude that these interrogations did not represent sei-

3. Although respondents insist that the circumstances of these interrogations were sufficiently coercive to constitute a "seizure" under the Fourth Amendment, they do not contend that these interviews were conducted under conditions that might be labeled "custodial"; they do not argue, therefore, that the questioning by INS agents posed any threat to the privilege

against self-incrimination protected by the Fifth Amendment. Cf. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Accordingly, it is not necessary to consider whether INS agents should be required to warn respondents of the possible incriminating consequences of providing answers to the agents' questions.

zures is to some extent understandable, of course, because such a conclusion permits the Court to avoid the imposing task of justifying these seizures on the basis of reasonable, objective criteria as required by the Fourth Amendment.

The reasonableness requirement of the Fourth Amendment applies to all seizures of the person, including those that involve only a brief detention short of traditional arrest. But because the intrusion upon an individual's personal security and privacy is limited in cases of this sort, we have explained that brief detentions may be justified on "facts that do not amount to the probable cause required for an arrest." *United States v. Brignoni-Ponce*, 422 U.S. 873, 880, 95 S.Ct. 2574, 2580, 45 L.Ed.2d 607 (1975). Nevertheless, our prior decisions also make clear that investigatory stops of the kind at issue here "must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981). As the Court stated in *Terry*, the "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." 392 U.S., at 21, n. 18, 88 S.Ct., at 1880, n. 18. Repeatedly, we have insisted that police may not detain and interrogate an individual unless they have reasonable grounds for suspecting that the person is involved in some unlawful activity. In *United States v. Brignoni-Ponce*, *supra*, for instance, the Court held that "[Border Patrol] officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." *Id.*, 422 U.S., at 884, 95 S.Ct., at 2581. See also *Michigan v. Summers*, 452 U.S. 692, 699-700, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981); *Ybarra v. Illinois*, 444 U.S. 85, 92-93, 100 S.Ct. 338, 342-343, 62 L.Ed.2d 238 (1979); *Brown v. Texas*, 443 U.S., at 51-52, 99 S.Ct., at 2640-

2641; *Delaware v. Prouse*, 440 U.S. 648, 661, 99 S.Ct. 1391, 1400, 59 L.Ed.2d 660 (1979); *Adams v. Williams*, 407 U.S., at 146-149, 92 S.Ct., at 1923-1924; *Davis v. Mississippi*, 394 U.S., at 726-728, 1397-1398; *Terry v. Ohio*, 392 U.S., at 16-19, 88 S.Ct., at 1877-1878. This requirement of particularized suspicion provides the chief protection of lawful citizens against unwarranted governmental interference with their personal security and privacy.

In this case, the individual seizures of respondents by the INS agents clearly were neither "based on specific, objective facts indicating that society's legitimate interests require[d] the seizure," nor "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown v. Texas*, *supra*, 443 U.S., at 51, 99 S.Ct., at 2640. It is undisputed that the vast majority of the undocumented aliens discovered in the surveyed factories had illegally immigrated from Mexico. Nevertheless, the INS agents involved in this case apparently were instructed, in the words of the INS Assistant District Director in charge of the operations, to interrogate "virtually all persons employed by a company." App. 49. See also *id.*, at 77, 85-86, 151-152, 155. Consequently, all workers, irrespective of whether they were American citizens, permanent resident aliens, or deportable aliens, were subjected to questioning by INS agents concerning their right to remain in the country. By their own admission, the INS agents did not selectively question persons in these surveys on the basis of any reasonable suspicion that the persons were illegal aliens. See *id.*, at 55, 155. That the INS policy is so indiscriminate should not be surprising, however, since many of the employees in the surveyed factories who are lawful residents of the United States may have been born in Mexico, have a Latin appearance, or speak Spanish while at work. See *id.*, at 57, 73. What this means, of course, is that the many lawful workers who constitute the clear majority at the surveyed workplaces

are subjected to surprise questioning under intimidating circumstances by INS agents who have no reasonable basis for suspecting that they have¹²³⁴ done anything wrong. To say that such an indiscriminate policy of mass interrogation is constitutional makes a mockery of the words of the Fourth Amendment.

Furthermore, even if the INS agents had pursued a firm policy of stopping and interrogating only those persons whom they reasonably suspected of being *aliens*, they would still have failed, given the particular circumstances of this case, to safeguard adequately the rights secured by the Fourth Amendment. The first and in my view insurmountable problem with such a policy is that, viewed realistically, it poses such grave problems of execution that in practice it affords virtually no protection to lawful American citizens working in these factories. This is so because, as the Court recognized in *Brignoni-Ponce*, *supra*, 422 U.S., at 886, 95 S.Ct., at 2582, there is no reliable way to distinguish with a reasonable degree of accuracy between native-born and naturalized citizens of Mexican ancestry on the one hand, and aliens of Mexican ancestry on the other.⁴ See also *Developments, Immigration Policy and the Rights of Aliens*, 96 Harv.L.Rev. 1286, 1374-1375 (1983). Indeed, the record in this case clearly demonstrates this danger, since respondents Correa and Delgado, although both American citizens, were subjected to questioning during the INS surveys.

4. As we explained in *Brignoni-Ponce*: "Large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry, and even in the border area a relatively small proportion of them are aliens." 422 U.S., at 886, 95 S.Ct., at 2583.

Indeed, the proposition that INS agents, even those who have considerable experience in the field, will be able fairly and accurately to distinguish between Spanish-speaking persons of Mexican ancestry who are either native-born or naturalized citizens, and Spanish-speaking persons of Mexican ancestry who are aliens is both implausible and subject to discriminatory abuse. The protection of fundamental constitutional rights should not depend upon such unconstrained administrative discretion, for, as we

¹²³⁵Moreover, the mere fact that a person is believed to be an alien provides no immediate grounds for suspecting any illegal activity. Congress, of course, possesses broad power to regulate the admission and exclusion of aliens, see *Kleindeinst v. Mandel*, 408 U.S. 753, 766, 92 S.Ct. 2576, 2583, 33 L.Ed.2d 683 (1972); *Fiallo v. Bell*, 430 U.S. 787, 792, 97 S.Ct. 1473, 1478, 52 L.Ed.2d 50 (1977), and resident aliens surely may be required to register with the INS and to carry proper identification, see 8 U.S.C. §§ 1302, 1304(e). Nonetheless, as we held in *Brignoni-Ponce*, 422 U.S., at 883-884, 95 S.Ct., at 2581-2582, when the Executive Branch seeks to enforce such congressional policies, it may not employ enforcement techniques that threaten the constitutional rights of American citizens. In contexts such as these factory surveys, where it is virtually impossible to distinguish fairly between citizens and aliens, the threat to vital civil rights of American citizens would soon become intolerable if we simply permitted the INS to question persons solely on account of suspected alienage. Cf. *id.*, at 884-886, 95 S.Ct., at 2581-2582. Therefore, in order to protect both American citizens and lawful resident aliens, who are also protected by the Fourth Amendment, see *Almeida-Sanchez v. United States*, 413 U.S. 266, 273, 93 S.Ct. 2535, 2539, 37 L.Ed.2d 596 (1973), the INS must tailor its enforcement efforts to focus only on those workers who are reasonably suspected of being illegal aliens.⁵

have often observed, "[w]hen ... a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits." *Brown v. Texas*, 443 U.S. 47, 52, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979).

5. Of course, as the Government points out, see Brief for Petitioners 35-38, § 287(a)(1) of the Immigration and Nationality Act provides that INS officers may, without a warrant, "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." 66 Stat. 233, 8 U.S.C. § 1357(a)(1). We have held, however, that broad statutory authority of this kind does not license the INS to employ unconstitutional enforcement methods. *Almeida-Sanchez v. United States*, 413 U.S., at 272-273, 93 S.Ct., at 2539-2540. Because of that

¹²³⁶Relying upon *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976), however, Justice POWELL would hold that the interrogation of respondents represented a "reasonable" seizure under the Fourth Amendment, even though the INS agents lacked any particularized suspicion of illegal alienage to support the questioning, *ante*, at 1767. In my view, reliance on that decision is misplaced. In *Martinez-Fuerte*, the Court held that when the intrusion upon protected privacy interests is extremely limited, the INS, in order to serve the pressing governmental interest in immigration enforcement, may briefly detain travelers at fixed checkpoints for questioning solely on the basis of "apparent Mexican ancestry." 428 U.S., at 563, 96 S.Ct., at 3085. In so holding, the Court was careful to distinguish its earlier decision in *Brignoni-Ponce*, *supra*, which held that Border Patrol agents conducting roving patrols may not stop and question motorists solely on the basis of apparent Mexican ancestry, and may instead make such stops only when their observations lead them "reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country." *Id.*, 422 U.S., at 881, 95 S.Ct., at 2580. The "crucial distinction" between the roving patrols and the fixed checkpoints, as the Court later observed in *Delaware v. Prouse*, 440 U.S., at 656, 99 S.Ct., at 1397, was "the lesser intrusion upon the motorist's Fourth Amendment interests" caused by the checkpoint operations. Thus, as the Court explained in *Martinez-Fuerte*: "This objec-

concern, the Court in *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), expressly left open the question whether INS officers "may stop persons reasonably believed to be aliens when there is no reason to believe they are illegally in the country." *Id.*, at 884, n. 9, 95 S.Ct., at 2582, n. 9. In my view, given the particular constitutional dangers posed by the INS's present method of carrying out factory surveys, the exercise of the authority granted by § 287(a)(1) must be limited to interrogations of only those persons reasonably believed to be in the country illegally.

6. Indeed, in *Martinez-Fuerte*, the Court repeatedly emphasized that, in contrast to the roving

intrusion—the stop itself, the questioning, and the visual inspection—also existed in roving-patrol stops. But we view checkpoint stops in a different light because the subjective intrusion—the generating of concern or even fright on the part of lawful travelers—is appreciably less in the case of a checkpoint stop." 428 U.S., at 558, 96 S.Ct., at 3083.⁶

¹²³⁷The limited departure from *Terry's* general requirement of particularized suspicion permitted in *Martinez-Fuerte* turned, therefore, largely on the fact that the intrusion upon motorists resulting from the checkpoint operations was extremely modest. In this case, by contrast, there are no equivalent guarantees that the privacy of lawful workers will not be substantially invaded by the factory surveys or that the workers will not be frightened by the INS tactics. Indeed, the opposite is true. First, unlike the fixed checkpoints that were upheld in *Martinez-Fuerte* in part because their location was known to motorists in advance, the INS factory surveys are sprung upon unsuspecting workers completely by surprise. Respondents testified that the sudden arrival of large numbers of INS agents created widespread fear and anxiety among most workers. See App. 89, 107, 116, 120–121, 129–130. Respondent Miramontes, for instance, explained that she was afraid during the surveys "[b]ecause if I leave and they think I don't have no papers and they shoot me or something. They see me leaving and they think I'm guilty." *Id.*, at 127.⁷ In *Mar-*

patrol stops, the fixed checkpoint operations are less likely to frighten motorists. This was so because "[m]otorists using these highways are not taken by surprise as they know ... the location of the checkpoints and will not be stopped elsewhere," and because the operations "both appear to and actually involve less discretionary enforcement activity." 428 U.S., at 559, 96 S.Ct., at 3083.

7. See also United States Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration 90–91* (1980) (noting that "[t]estimony received by the Commission indicates that ... INS area control operations do cause confusion and pandemonium

tinez-Fuerte, there was absolutely no evidence of widespread fear and anxiety similar to that adduced in this case.

Second, the degree of unfettered discretionary judgment exercised by the individual INS agents during the factory surveys is considerably greater than in the fixed checkpoint operations. The power of individual INS agents to decide who they will stop and question and who they will pass over contributes significantly to the feeling of uncertainty and ¹²³⁸anxiety of the workers. See App. 86, 90, 129-130. Unlike the fixed checkpoint operation, there can be no reliable sense among the affected workers that the survey will be conducted in an orderly and predictable manner. Third, although the workplace obviously is not as private as the home, it is at the same time not without an element of privacy that is greater than in an automobile. All motorists expect that while on the highway they are subject to general police surveillance as part of the regular and expectable enforcement of traffic laws. For the average employee, however, the workplace encloses a small, recognizable community that is a locus of friendships, gossip, common effort, and shared experience. While at work, therefore, the average employee will not have the same sense of anonymity that is felt when one is driving on the public highways; instead, an employee will be known by co-workers and will recognize other employees as his or her fellows. This experience, common enough among all who work, forms the basis for a legitimate, albeit modest, expectation of privacy that cannot be indiscriminately invaded by government agents. See *Mancusi v. DeForte*, 392 U.S. 364, 368-369, 88 S.Ct. 2120, 2123-2124, 20 L.Ed.2d 1154 (1968) (employee has reasonable expectation of privacy in office space shared with other workers). The mere fact that the employer has consented to the entry of the INS onto his property does not mean that the workers' expectation of privacy evaporates.

among all factory employees, thereby disrupting a factory's operations and decreasing produc-

Finally, there is no historical precedent for these kinds of surveys that would make them expectable or predictable. As the Court noted in *Martinez-Fuerte*, *supra*, 428 U.S., at 560-561, n. 14, 96 S.Ct., at 3084, n. 14, road checkpoints are supported to some extent by a long history of acceptance that diminishes substantially the concern and fear that such practices would elicit in the average motorist. But factory surveys of the kind conducted by the INS are wholly unprecedented, and their novelty can therefore be expected to engender a high degree of resentment and anxiety. In sum, although the governmental interest is obviously as substantial here as it was in *Martinez-Fuerte*, ²³⁹ the degree of intrusion upon the privacy rights of lawful workers is significantly greater. Accordingly, the quantum of suspicion required to justify such an intrusion must be correspondingly greater.

In my view, therefore, the only acceptable alternatives that would adequately safeguard Fourth Amendment values in this context are for the INS either (a) to adopt a firm policy of stopping and questioning only those workers who are reasonably suspected of being illegal aliens, or (b) to develop a factory survey program that is predictably and reliably less intrusive than the current scheme under review. The first alternative would satisfy the requirement of particularized suspicion enunciated in *Terry*—a principle that must control here because the specific conditions that permitted exception to that requirement in *Martinez-Fuerte* are simply not present. The second alternative would seek to redesign the factory survey techniques used by the INS in order to bring them more closely into line with the characteristics found in *Martinez-Fuerte*. Such a scheme might require the INS, before conducting a survey of all workers in a particular plant, to secure an administrative warrant based upon a showing that reasonable grounds exist for believing that a substantial num-

tion").

ber of workers employed at the factory are undocumented aliens subject to deportation, and that there are no practical alternatives to conducting such a survey. Cf. *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967). In addition, the surveys could be further tailored in duration and manner so as to be substantially less intrusive.

III

No one doubts that the presence of large numbers of undocumented aliens in this country creates law enforcement problems of titanic proportions for the INS. Nor does anyone question that this agency must be afforded considerable latitude in meeting its delegated enforcement responsibilities. I am afraid, however, that the Court has become so ¹²⁴⁰mesmerized by the magnitude of the problem that it has too easily allowed Fourth Amendment freedoms to be sacrificed. Before we discard all efforts to respect the commands of the Fourth Amendment in this troubling area, however, it is worth remembering that the difficulties faced by the INS today are partly of our own making.

The INS methods under review in this case are, in my view, more the product of expedience than of prudent law enforcement policy. The Immigration and Nationality Act establishes a quota-based system for regulating the admission of immigrants to this country which is designed to operate primarily at our borders. See 8 U.S.C. §§ 1151-1153, 1221-1225. See generally *Developments*, 96 Harv.L.Rev., at 1334-1369. With respect to Mexican immigration, however, this system has almost completely broken down. This breakdown is due in part, of course, to the considerable

practical problems of patrolling a 2,000-mile border; it is, however, also the result of our failure to commit sufficient resources to the border patrol effort. See Administration's Proposals on Immigration and Refugee Policy: Joint Hearing before the Subcommittee on Immigration, Refugees, and International Law of the House Committee on the Judiciary, and the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 97th Cong., 1st Sess., 6 (1981) (statement of Attorney General Smith); see also *Developments*, 96 Harv.L.Rev., at 1439. Furthermore, the Act expressly exempts American businesses that employ undocumented aliens from all criminal sanctions, 8 U.S.C. § 1324(a), thereby adding to the already powerful incentives for aliens to cross our borders illegally in search of employment.⁸

¹²⁴¹In the face of these facts, it seems anomalous to insist that the INS must now be permitted virtually unconstrained discretion to conduct wide-ranging searches for undocumented aliens at otherwise lawful places of employment in the interior of the United States. What this position amounts to, I submit, is an admission that since we have allowed border enforcement to collapse and since we are unwilling to require American employers to share any of the blame, we must, as a matter of expediency, visit all of the burdens of this jury-rigged enforcement scheme on the privacy interests of completely lawful citizens and resident aliens who are subjected to these factory raids solely because they happen to work alongside some undocumented aliens.⁹ The average American, as we have long recognized, see *Carroll v. United States*, 267 U.S. 132, 154, 45 S.Ct. 280, 285, 69 L.Ed. 543 (1925), expects some interfer-

8. The enormous law enforcement problems resulting from this combination of practical difficulties in patrolling this border and the incentives for illegal aliens to secure employment have been noted by the Congress, see Hearings on Oversight of the Immigration and Naturalization Service before the Subcommittee on Immigration, Citizenship and International Law of the House Committee on the Judiciary, 95th Cong., 2d Sess. (1978); and also by a Select Commission on Immigration and Refugee Policy, see United States Immigration Policy and

the National Interest, Final Report of the Select Commission on Immigration and Refugee Policy 46, 61-62, 72-73 (1981).

9. In this regard, the views expressed in Justice WHITE's concurring opinion in *United States v. Ortiz*, 422 U.S. 891, 915, 95 S.Ct. 2585, 2598, 45 L.Ed.2d 623 (1975), are particularly pertinent:

"The entire [immigration enforcement] system, however, has been notably unsuccessful in deterring or stemming this heavy flow [of illegal immigration]; and its costs, including added

ence with his or her liberty when seeking to cross the Nation's borders, but until today's decision no one would ever have expected the same treatment while lawfully at work in the country's interior. Because the conditions which spawned such expedient solutions are in no sense the fault of these ¹²⁴²lawful workers, the Court, as the guardian of their constitutional rights, should attend to this problem with greater sensitivity before simply pronouncing the Fourth Amendment a dead letter in the context of immigration enforcement. The answer to these problems, I suggest, does not lie in abandoning our commitment to protecting the cherished rights secured by the Fourth Amendment, but rather may be found by reexamining our immigration policy.

I dissent.



466 U.S. 243, 80 L.Ed.2d 273

¹²⁴³TRANS WORLD AIRLINES,
INC., Petitioner,

v.

FRANKLIN MINT
CORPORATION et al.

FRANKLIN MINT CORPORATION, et
al., Petitioners,

v.

TRANS WORLD AIRLINES, INC.

Nos. 82-1186, 82-1465.

Argued Nov. 30, 1983.

Decided April 17, 1984.

Rehearing Denied June 4, 1984.

See 467 U.S. 1231, 104 S.Ct. 2691.

Shipper brought action against airline to recover for cargo loss. The United

burdens on the courts, have been substantial. Perhaps the Judiciary should not strain to accommodate the requirements of the Fourth Amendment to the needs of a system which at best can demonstrate only minimal effectiveness as long as it is lawful for business firms

States District Court, 525 F.Supp. 1288, entered judgment in favor of shipper reflecting carrier's liability limit and shipper appealed. The Court of Appeals for the Second Circuit, 690 F.2d 303, affirmed but held that Warsaw Convention liability limit would be unenforceable in the United States 60 days from the issuance of the Court's mandate. The Supreme Court, O'Connor, J., held that: (1) repeal of the Par Valuation Act did not render the Convention's gold-based liability limit unenforceable, and (2) CAB's choice of \$9.07 per pound as conversion figure for limitation of liability contained in the Convention was proper.

Affirmed.

Justice Stevens filed a dissenting opinion.

1. Carriers ⇐132

Under Article 18 of the Warsaw Convention, carriers are presumptively liable for the loss of cargo. Warsaw Convention, Art. 18, 49 U.S.C.A. § 1502 note.

2. Treaties ⇐6

There is a canon of construction against finding implicit repeal of a treaty in ambiguous congressional action.

3. Treaties ⇐12

Warsaw Convention is a self-executing treaty; although the Convention permits individual signatories to convert liability limits into national currencies by legislation or otherwise, no domestic legislation is required to give the Convention the force of law in the United States. Warsaw Convention, Art. 1 et seq., 49 U.S.C.A. § 1502 note.

4. Treaties ⇐5

Repeal of a purely domestic piece of legislation should not be read as implicit

and others to employ aliens who are illegally in the country. This problem, which ordinary law enforcement has not been able to solve, essentially poses questions of national policy and is chiefly the business of Congress and the Executive Branch rather than the courts."

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**Racial Profiling Directive
Meeting Agenda
October 7, 1999**

I. Field test implementation plans

- A. Department of Justice
 - INS outstanding issues
- B. Department of Treasury
- C. Department of Interior

II. Policies, practices and training

- A. Department of Justice
 - DEA
 - INS
 - FBI
- B. Department of Treasury
- C. Department of Interior
- D. Recommendations

Rose Polinsky - 10/7

Brian

DOJ

INS

ID locations - bus stops, laid crossing, in door check point
worksite enforcement - AG would like to add - will work w/ this
working w/ ~~AG~~ CRTD

- Port of entry not in US - Mexico
Border in TX work w/ Customs
sub - Google Pan TX fixed.
AG approval b/c delay in board, need take.

Jan
BSS

Non-suspect ^{suspect} encounter.

- Do not want to collect too much info
- include data of people who are not stopped.

Will assemble all data of enforcement activities, arrest, prosecution - would be comprehensive.

proem

As we collect data, concurrently as we develop recommendations on policies

Treasury

Secret Service already ~~pro~~ track data for arrest, just need to add steps

Customs - Airports

Category - OMB + passports (citizenship) = already collected for IBIS.

Arab Am. ~~concern~~ w/ FAA stops before get on airlines
Immigration ~~is~~ already doing this - so will provide some baseline info.

Recommendations will go to this issue.

Transportation - screening system

(2)

Indevior

Nat'l Park Service

Know # of visitors but not ~~the~~ breakdown.

Existing
Policy

DOJ - policy still ongoing discussions

FBI

- Focuses on activity ^{behavior} not on ethnicity ~~and~~ look at other indicators

- What - ~~how~~ ^{what} is drug

- Where - to + from

- When

- How moved

- Who - physical description - wiretaps, intelligence, may include race or nationality but other characteristics

Predict ~~the~~ intelligence reports -

Race/Ethnicity ~~the~~ friends - helps to target, cooperate
education

Eg. Race not an indicator.

Individuals distinguish themselves.

* Look at training manual.

④ - Groups ~~are~~ are requesting info
articulation of current practices
w/ some initial recommendations.
but not endorsement of this policy
ongoing review - work group.

Pentagon Says It Can Find No Proof of Massacre

By ELIZABETH BECKER

WASHINGTON, Sept. 22 — Without denying that Korean civilians were killed at the Bridge of No Gun Ri 49 years ago, Pentagon officials said today that a search of their archives turned up no documents that prove that American soldiers massacred the civilians.

"The U.S. Army Center for Military History has reviewed its records and has found no information that substantiates the claim that United States Army soldiers perpetrated a massacre of South Korean civilians at No Gun Ri," said Col. Ed Vega, spokesman for the Army.

Defense Department officials said there are no plans to conduct a far-reaching investigation. In the absence of archival records, the Pentagon would have to undertake a major research project pulling records, interviewing Korean and American witnesses and cross-checking the information with other documents in order to find evidence about the incident.

Military and academic historians interviewed said they were not surprised that civilians were killed in the early months of the Korean War, although they disagreed about the

Washington seems not to be inclined, 49 years later, to open a major inquiry.

meaning of the findings.

Bruce Cumings of the University of Chicago, who first wrote about reports of an incident near the bridge in his book "The Origins of the Korean War, Volume II" (Princeton, 1990), said he relied in part on the contemporary reporting of Walter Sullivan in *The New York Times*.

Though in his July 22, 1950, article about the fighting, Mr. Sullivan did not report the killing of civilians, he did write this: "The American G.I. is now beginning to eye with suspicion any Korean civilian in the cities or countryside. Watch those guys in white! — the customary peasant dress — is the cry often heard near the front."

Through the diary of a dead Korean soldier and United States military records, Mr. Cumings said he had

showed that Korean civilians had died during American aerial bombardments.

This bombardment and strafing could have driven the civilians to take refuge under the bridge. Mr. Cumings said that The Associated Press reporting "makes it unquestionable that tens or hundreds of Koreans were killed by Americans."

William Stueck, a history professor at the University of Georgia and author of "The Korean War: an International History" (Princeton, 1995), said that since there was infiltration of United States lines by enemy troops posing as civilians, the reaction of United States soldiers was predictable.

Assuming the incident happened, Mr. Stueck said, "it wouldn't surprise me that American soldiers were very sensitive to that."

It is a violation of the rule of law for the military to use civilians to mask their operations in war.

Both Mr. Stueck and Mr. Cumings said there was no previous report of any atrocity of this magnitude by United States forces in the Korean War. They and other historians noted that the many atrocities committed during the conflict were largely by Koreans against each other.

California Racial Profiling Bill Is Vetoed

But Governor Urges Local Police to Assess the Practice Voluntarily

By JAMES STERNGLD

LOS ANGELES, Sept. 29 — Playing both sides of a divisive racial issue, Gov. Gray Davis of California has vetoed a bill requiring law-enforcement agencies to provide information to determine whether they are stopping a disproportionate share of racial minority members.

But while he questioned the usefulness and cost of the measure, which is strongly supported by civil rights groups, Governor Davis ordered the state highway patrol to collect that information and urged local police departments to do so voluntarily.

Supporters of the bill contended that at a cost of less than \$2 million a year it would have produced evidence of whether motorists from minorities were being stopped by law-enforcement officers for questioning because of the driver's race. The bill would have required the police to record the race, sex and other information about every motorist they stop.

In his veto message late on Tuesday, the Governor, who was supported in his election campaign last year by the usually conservative police groups that opposed the measure, disputed the cost estimates of the bill's supporters and said "it is questionable whether the information gathered — at a potential cost of tens of millions of dollars — would provide any more meaningful information than is currently available."

He added that although there might be a few specific instances of racial profiling "there is no evidence that this practice is taking place statewide."

And yet Governor Davis noted approvingly that more than 30 local law-enforcement agencies around the state were voluntarily collecting information on the people being stopped by the police and said he had ordered the sole law-enforcement agency under his direct control, the California Highway Patrol, to record the ethnicity as well as other data on

the people stopped.

Governor Davis's communications director, Philip Trounstein, said he believed that there was no contradiction in the actions and that what the Governor principally objected to was mandating every police agency in the state to collect the statistics. He said the Governor felt the police should undertake the collection of racial data on their own and only where it seemed necessary.

Civil rights groups have said the targeting of minorities, largely black and Hispanic motorists, is a long-

Governor Davis walks a fine line on a contentious issue.

standing practice among some police departments, and, most recently, President Clinton ordered Federal law-enforcement officials to collect information on the race and sex of people they stop. Gov. Christine Todd Whitman of New Jersey has acknowledged that state police there had engaged in racial profiling, and she has appointed a new chief to attack the problem.

California's Attorney General, Bill Lockyer, a Democrat, supported the bill, saying it would increase public confidence in law enforcement. But several police associations said that having to record the data would be an unnecessary burden and would contradict the training officers receive to ignore the race of suspects.

The bill would have required police officials to record the apparent ethnicity of every motorist they stop, as well as other information like age, sex, whether they conducted a search and whether a citation was issued. The officers would not have asked the racial background of the

motorists, but would have relied on their own visual determination.

The bill, which would have lapsed at the end of 2004, included no provisions to halt the practice if it existed but would have provided the first comprehensive data in the state on what kinds of people were being stopped by the police and whether the figures varied by district. Civil rights groups have argued that such information is an important first step in rooting out what they contend is a pattern of racism.

The bill was sponsored by State Senator Kevin Murray, a Los Angeles Democrat and an African-American who earlier had sued the Beverly Hills Police Department, contending that he had been stopped by a policeman there purely because of his race.

Mr. Murray harshly criticized the Governor today, saying, "What we have now is the largest state in the union, with the largest population of minorities, which has now said it's not going to do anything on this problem."

Mr. Trounstein disputed the suggestion that Mr. Davis was doing nothing and insisted that the dispute was largely over the best way to achieve the goal.

"People may argue about whether mandating the collection of data is the proper state function," Mr. Trounstein said, "but no one can question Governor Davis's commitment to civil rights and equal protection under the law."

Governor Davis followed up his veto by writing to Mayor Richard J. Riordan of Los Angeles, whose police chief had criticized the bill, and urging him to begin collecting the data voluntarily, as some other cities are.

"The Governor can't rely on volunteerism, rely on law-enforcement agencies to volunteer to do this," said Elizabeth Schroeder of the American Civil Liberties Union of Southern California.

The New York Times

THURSDAY SEPTEMBER 29 1999

federal register

Thursday
October 30, 1997

Part II

Office of Management and Budget

Revisions to the Standards for the
Classification of Federal Data on Race
and Ethnicity; Notices

OFFICE OF MANAGEMENT AND BUDGET

Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Notice of decision.

SUMMARY: By this Notice, OMB is announcing its decision concerning the revision of Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. OMB is accepting the recommendations of the Interagency Committee for the Review of the Racial and Ethnic Standards with the following two modifications: (1) the Asian or Pacific Islander category will be separated into two categories—"Asian" and "Native Hawaiian or Other Pacific Islander," and (2) the term "Hispanic" will be changed to "Hispanic or Latino."

The revised standards will have five minimum categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. There will be two categories for data on ethnicity: "Hispanic or Latino" and "Not Hispanic or Latino."

The Supplementary Information in this Notice provides background information on the standards (Section A); a summary of the comprehensive review process that began in July 1993 (Section B); a brief synopsis of the public comments OMB received on the recommendations for changes to the standards in response to the July 9, 1997, *Federal Register* Notice (Section C); OMB's decisions on the specific recommendations of the Interagency Committee (Section D); and information on the work that is underway on tabulation issues associated with the reporting of multiple race responses (Section E).

The revised standards for the classification of Federal data on race and ethnicity are presented at the end of this notice; they replace and supersede Statistical Policy Directive No. 15.

EFFECTIVE DATE: The new standards will be used by the Bureau of the Census in the 2000 decennial census. Other Federal programs should adopt the standards as soon as possible, but not later than January 1, 2003, for use in household surveys, administrative forms and records, and other data collections. In addition, OMB has

approved the use of the new standards by the Bureau of the Census in the "Dress Rehearsal" for Census 2000 scheduled to be conducted in March 1998.

ADDRESSES: Please send correspondence about OMB's decision to: Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10201 New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503; fax: (202) 395-7245.

ELECTRONIC AVAILABILITY AND ADDRESSES: This *Federal Register* Notice and the related OMB Notices of June 9, 1994, August 28, 1995, and July 9, 1997, are available electronically from the OMB Homepage on the World Wide Web: <<<http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html>>>.

Federal Register Notices are also available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>>. Questions about accessing the *Federal Register* online via *GPO Access* may be directed to telephone (202) 512-1530 or toll free at (888) 293-6498; to fax (202) 512-1262; or to E-mail <<gpoaccess@gpo.gov>>.

This Notice is available in paper copy from the OMB Publications Office, 725 17th Street, NW, NEOB, Room 2200, Washington, D.C. 20503; telephone (202) 395-7332; fax (202) 395-6137.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, N.W., Washington, D.C. 20503; telephone: (202) 395-3093; fax (202) 395-7245.

SUPPLEMENTARY INFORMATION:

A. Background

For more than 20 years, the current standards in OMB's Statistical Policy Directive No. 15 have provided a common language to promote uniformity and comparability for data on race and ethnicity for the population groups specified in the Directive. They were developed in cooperation with Federal agencies to provide consistent data on race and ethnicity throughout the Federal Government. Development of the data standards stemmed in large measure from new responsibilities to enforce civil rights laws. Data were needed to monitor equal access in housing, education, employment, and other areas, for populations that historically had experienced discrimination and differential treatment because of their race or

ethnicity. The standards are used not only in the decennial census (which provides the data for the "denominator" for many measures), but also in household surveys, on administrative forms (e.g., school registration and mortgage lending applications), and in medical and other research. The categories represent a social-political construct designed for collecting data on the race and ethnicity of broad population groups in this country, and are not anthropologically or scientifically based.

B. Comprehensive Review Process

Particularly since the 1990 census, the standards have come under increasing criticism from those who believe that the minimum categories set forth in Directive No. 15 do not reflect the increasing diversity of our Nation's population that has resulted primarily from growth in immigration and in interracial marriages. In response to the criticisms, OMB announced in July 1993 that it would undertake a comprehensive review of the current categories for data on race and ethnicity.

This review has been conducted over the last four years in collaboration with the Interagency Committee for the Review of the Racial and Ethnic Standards, which OMB established in March 1994 to facilitate the participation of Federal agencies in the review. The members of the Interagency Committee, from more than 30 agencies, represent the many and diverse Federal needs for data on race and ethnicity, including statutory requirements for such data. The Interagency Committee developed the following principles to govern the review process:

1. The racial and ethnic categories set forth in the standards should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance. To assure they are reliable, meaningful, and understood by respondents and observers, the racial and ethnic categories set forth in the standard should be developed using

appropriate scientific methodologies, including the social sciences.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicative, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any federal program.

6. The standards should be developed to meet, at a minimum, Federal legislative and programmatic requirements. Consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents; public and private costs to implement the revisions should be a factor in the decision.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

12. Time will be allowed to phase in any new categories. Agencies will not be required to update historical records.

13. The new directive should be applicable throughout the U.S. Federal statistical system. The standard or standards must be usable for the decennial census, current surveys, and administrative records, including those using observer identification.

The principal objective of the review has been to enhance the accuracy of the demographic information collected by the Federal Government. The starting point for the review was the minimum set of categories for data on race and ethnicity that have provided information for more than 20 years for a variety of purposes, and the recognition of the importance of being able to maintain this historical continuity. The review process has had two major elements: (1) public comment on the present standards, which helped to identify concerns and provided numerous suggestions for changing the standards; and (2) research and testing related to assessing the possible effects of suggested changes on the quality and usefulness of the resulting data.

Public input, the first element of the review process, was sought through a variety of means: (1) During 1993, Congressman Thomas C. Sawyer, then Chairman of the House Subcommittee on Census, Statistics, and Postal Personnel, held four hearings that included 27 witnesses, focusing particularly on the use of the categories in the 2000 census. (2) At the request of OMB, the National Academy of Sciences' Committee on National Statistics (CNSTAT) conducted a workshop in February 1994 to articulate issues surrounding a review of the categories. The workshop included representatives of Federal agencies, academia, social science research institutions, interest groups, private industry, and a local school district. (A summary of the workshop, *Spotlight on Heterogeneity: The Federal Standards for Racial and Ethnic Classification*, is available from CNSTAT, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.) (3) On June 9, 1994, OMB published a **Federal Register** (59 FR 29831-29835) Notice that contained background information on the development of the current standards and requested public comment on: the adequacy of current racial and ethnic categories; the principles that should govern any proposed revisions to the standards; and specific suggestions for change that had been offered by individuals and interested groups over a period of several years. In response, OMB received nearly 800 letters. As part of this comment period and to bring the review closer to the public, OMB also heard testimony from 94 witnesses at hearings held during July 1994 in Boston, Denver, San Francisco, and Honolulu. (4) In an August 28, 1995, **Federal Register** (60 FR 44674-44693) Notice, OMB provided an interim report

on the review process, including a summary of the comments on the June 1994 **Federal Register** Notice, and offered a final opportunity for comment on the research to be conducted during 1996. (5) OMB staff have also discussed the review process with various interested groups and have made presentations at numerous meetings.

The second element of the review process involved research and testing of various proposed changes. The categories in OMB's Directive No. 15 are used not only to produce data on the demographic characteristics of the population, but also to monitor civil rights enforcement and program implementation. Research was undertaken to provide an objective assessment of the data quality issues associated with various approaches to collecting data on race and ethnicity. To that end, the Interagency Committee's Research Working Group, co-chaired by the Bureau of the Census and the Bureau of Labor Statistics, reviewed the various criticisms and suggestions for changing the current categories, and developed a research agenda for some of the more significant issues that had been identified. These issues included how to collect data on persons who identify themselves as "multiracial"; whether to combine race and Hispanic origin in one question or have separate questions on race and Hispanic origin; whether to combine the concepts of race, ethnicity, and ancestry; whether to change the terminology used for particular categories; and whether to add new categories to the current minimum set.

Because the mode of data collection can have an effect on how a person responds, the research agenda proposed studies both in surveys using in-person or telephone interviews and in self-administered questionnaires, such as the decennial census, which are filled out by the respondent and mailed back. Cognitive interviews were conducted with various groups to provide guidance on the wording of the questions and the instructions for the tests and studies.

The research agenda included several major national tests, the results of which are discussed throughout the Interagency Committee's *Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15*: (1) In May 1995, the Bureau of Labor Statistics (BLS) sponsored a Supplement on Race and Ethnicity to the Current Population Survey (CPS). The findings were made available in a 1996 report, *Testing Methods of Collecting Racial and Ethnic Information: Results of the Current Population Survey Supplement on Race*

and Ethnicity, available from BLS, 2 Massachusetts Avenue, N.E., Room 4915, Postal Square Building, Washington, D.C. 20212, or by calling 202-606-7375. The results were also summarized in an October 26, 1995, news release, which is available electronically at <<<http://stats.bls.gov/news.release/ethnic.toc.htm>>>. (2) The Bureau of the Census, as part of its research for the 2000 census, tested alternative approaches to collecting data on race and ethnicity in the March 1996 National Content Survey (NCS). The Census Bureau published the results in a December 1996 report, *Findings on Questions on Race and Hispanic Origin Tested in the 1996 National Content Survey*; highlights of the report are available at <<<http://www.census.gov/population/www/socdemo/96natcontentsurvey.html>>>. (3) In June 1996, the Census Bureau conducted the Race and Ethnic Targeted Test (RAETT), which was designed to permit assessments of the effects of possible changes on smaller populations not reliably measured in national samples, including American Indians, Alaska Natives, detailed Asian and Pacific Islander groups (such as Chinese and Hawaiians), and detailed Hispanic groups (such as Puerto Ricans and Cubans). The Census Bureau released the results in a May 1997 report, *Results of the 1996 Race and Ethnic Targeted Test*; highlights of the report are available at <<<http://www.census.gov/population/www/documentation/twps-0018.html>>>. Single copies (paper) of the NCS and RAETT reports may be obtained from the Population Division, U.S. Bureau of the Census, Washington, D.C. 20233; telephone 301-457-2402.

In addition to these three major tests, the National Center for Education Statistics (NCES) and the Office for Civil Rights in the Department of Education jointly conducted a survey of 1,000 public schools to determine how schools collect data on the race and ethnicity of their students and how the administrative records containing these data are maintained to meet statutory requirements for reporting aggregate information to the Federal Government. NCES published the results in a March 1996 report, *Racial and Ethnic Classifications Used by Public Schools* (NCES 96-092). The report is available electronically at <<<http://nces.ed.gov/pubs/96092.html>>>. Single paper copies may be obtained from NCES, 555 New Jersey, NW, Washington, D.C. 20208-5574, or by calling 202-219-1442.

The research agenda also included studies conducted by the National Center for Health Statistics, the Office of the Assistant Secretary for Health, and

the Centers for Disease Control and Prevention to evaluate the procedures used and the quality of the information on race and ethnicity in administrative records such as that reported on birth certificates and recorded on death certificates.

On July 9, 1997, OMB published a **Federal Register Notice** (62 FR 36874-36946) containing the Interagency Committee's *Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15*. The Notice made available for comment the Interagency Committee's recommendations for how OMB should revise Directive No. 15. The report consists of six chapters. Chapter 1 provides a brief history of Directive No. 15, a summary of the issues considered by the Interagency Committee, a review of the research activities, and a discussion of the criteria used in conducting the evaluation. Chapter 2 discusses a number of general concerns that need to be addressed when considering any changes to the current standards. Chapters 3 through 5 report the results of the research as they bear on the more significant suggestions OMB received for changes to Directive No. 15. Chapter 6 gives the Interagency Committee's recommendations concerning the various suggested changes based on a review of public comments and testimony and the research results.

C. Summary of Comments Received on the Interagency Committee's Recommendations

In response to the July 9, 1997, **Federal Register Notice**, OMB received approximately 300 letters (many of them hand written) on a variety of issues, plus approximately 7000 individually signed and mailed, preprinted postcards on the issue of classifying data on Native Hawaiians, and about 500 individually signed form letters from members of the Hapa Issues Forum in support of adopting the recommendation for multiple race reporting. Some of the 300 letters focused on a single recommendation of particular interest to the writer, while other letters addressed a number of the recommendations. The preponderance of the comments were from individuals. Each comment was considered in preparing OMB's decision.

1. Comments on Recommendations Concerning Reporting More Than One Race

The Interagency Committee recommended that, when self-identification is used, respondents who wish to identify their mixed racial

heritage should be able to mark or select more than one of the racial categories originally specified in Directive No. 15, but that there should not be a "multiracial" category. This recommendation to report multiple races was favorably received by most of those commenting on it, including associations and organizations such as the American Medical Association, the National Education Association, the National Council of La Raza, and the National Committee on Vital and Health Statistics, as well as all Federal agencies that responded. Comments from some organizations, such as the NAACP Legal Defense and Educational Fund, the Lawyers' Committee for Civil Rights Under Law, and the Equal Employment Advisory Council, were receptive to the recommendation on multiple race responses, but expressed reservations pending development of tabulation methods to ensure the utility of these data. The recommendation was also supported by many of the advocacy groups that had earlier supported a "multiracial" (box) category, such as the Association of MultiEthnic Americans and its affiliates nationwide. Several individuals wrote in support of "multiple race" reporting, basing their comments on a September 1997 article, "What Race Am I?" in *Mademoiselle* magazine, which urged its readers "to express an opinion on whether or not a 'Multiracial' category should be included in all federal recordkeeping, including the 2000 census." A few comments specifically favoring multiple race responses suggested that respondents should also be asked to indicate their primary racial affiliation in order to facilitate the tabulation of responses. A handful of comments on multiple race reporting suggested that individuals with both Hispanic and non-Hispanic heritages be permitted to mark or select both categories (see discussion below).

A few comments, in particular some from state agencies and legislatures, opposed any multiple race reporting because of possible increased costs to collect the information and implementation problems. Comments from the American Indian tribal governments also were opposed to the recommendation concerning reporting more than one race. A number of the comments that supported multiple race responses also expressed concern about the cost and burden of collecting the information to meet Federal reporting requirements, the schedule for implementation, and how the data would be tabulated to meet the requirements of legislative redistricting

and enforcement of the Voting Rights Act. A few comments expressed support for categories called "human," or "American"; several proposed that there be no collection of data on race.

2. Comments on Recommendation for Classification of Data on Native Hawaiians

The Interagency Committee recommended that data on Native Hawaiians continue to be classified in the Asian or Pacific Islander category. This recommendation was opposed by the Hawaiian congressional delegation, the 7,000 individuals who signed and sent preprinted yellow postcards, the State of Hawaii departments and legislature, Hawaiian organizations, and other individuals who commented on this recommendation. Instead, the comments from these individuals supported reclassifying Native Hawaiians in the American Indian or Alaska Native category, which they view as an "indigenous peoples" category (although this category has not been considered or portrayed in this manner in the standards). Native Hawaiians, as the descendants of the original inhabitants of what is now the State of Hawaii, believe that as indigenous people they should be classified in the same category as American Indians and Alaska Natives. On the other hand, the American Indian tribal governments have opposed such a reclassification, primarily because they view the data obtained from that category as being essential for administering Federal programs for American Indians. Comments from the Native Hawaiians also noted the Asian or Pacific Islander category provides inadequate data for monitoring the social and economic conditions of Native Hawaiians and other Pacific Islander groups. Because the Interagency Committee had recommended against adding categories to the minimum set of categories, requesting a separate category for Native Hawaiians was not viewed as an option by those who commented.

3. Comments on Recommendation Concerning Classification of Data on Central and South American Indians

The Interagency Committee recommended that data for Central and South American Indians be included in the American Indian or Alaska Native category. Several comments from the American Indian community opposed this recommendation. Moreover, comments from some Native Hawaiians pointed out what they believed to be an inconsistency in the Interagency Committee's recommendation to

include in the American Indian or Alaska Native category descendants of Central and South American Indians—persons who are not original peoples of the United States—if Native Hawaiians were not to be included.

4. Comments on Recommendation Not to Add an Arab or Middle Eastern Ethnic Category

The Interagency Committee recommended that an Arab or Middle Eastern ethnic category should not be added to the minimum standards for all reporting of Federal data on race and ethnicity. Several comments were received in support of having a separate category in order to have data viewed as necessary to monitor discrimination against this population.

5. Comments on Recommendations for Terminology

Comments on terminology largely supported the Interagency Committee's recommendations to retain the term "American Indian," to change "Hawaiian" to "Native Hawaiian," and to change "Black" to "Black or African American." There were a few requests to include "Latino" in the category name for the Hispanic population.

D. OMB's Decisions

This section of the Notice provides information on the decisions taken by OMB on the recommendations that were proposed by the Interagency Committee. The Committee's recommendations addressed options for reporting by respondents, formats of questions, and several aspects of specific categories, including possible additions, revised terminology, and changes in definitions. In reviewing OMB's decisions on the recommendations for collecting data on race and ethnicity, it is useful to remember that these decisions:

- retain the concept that the standards provide a *minimum* set of categories for data on race and ethnicity;
- permit the collection of more detailed information on population groups provided that any additional categories can be aggregated into the minimum standard set of categories;
- underscore that self-identification is the preferred means of obtaining information about an individual's race and ethnicity, except in instances where observer identification is more practical (e.g., completing a death certificate);
- do *not* identify or designate certain population groups as "minority groups";
- continue the policy that the categories are *not* to be used for determining the eligibility of population

groups for participation in any Federal programs;

- do *not* establish criteria or qualifications (such as blood quantum levels) that are to be used in determining a particular individual's racial or ethnic classification; and
- do *not* tell an individual who he or she is, or specify how an individual should classify himself or herself.

In arriving at its decisions, OMB took into account not only the public comment on the recommendations published in the *Federal Register* on July 9, 1997, but also the considerable amount of information provided during the four years of this review process, including public comments gathered from hearings and responses to two earlier OMB Notices (on June 9, 1994, and August 28, 1995). The OMB decisions benefited greatly from the participation of the public that served as a constant reminder that there are real people represented by the data on race and ethnicity and that this is for many a deeply personal issue. In addition, the OMB decisions benefited from the results of the research and testing on how individuals identify themselves that was undertaken as part of this review process. This research, including several national tests of alternative approaches to collecting data on race and ethnicity, was developed and conducted by the professional statisticians and analysts at several Federal agencies. They are to be commended for their perseverance, dedication, and professional commitment to this challenging project.

OMB also considered in reaching its decisions the extent to which the recommendations were consistent with the set of principles (see Section B of the Supplementary Information) developed by the Interagency Committee to guide the review of this sensitive and substantively complex issue. OMB believes that the Interagency Committee's recommendations took into account the principles and achieved a reasonable balance with respect to statistical issues, data needs, social concerns, and the personal dimensions of racial and ethnic identification. OMB also finds that the Committee's recommendations are consistent with the principal objective of the review, which is to enhance the accuracy of the demographic information collected by the Federal Government by having categories for data on race and ethnicity that will enable the capture of information about the increasing diversity of our Nation's population while at the same time respecting each individual's dignity.

As indicated in detail below, OMB accepts the Interagency Committee's recommendations concerning reporting more than one race, including the recommendation that there be no category called "multiracial," the formats and sequencing of the questions on race and Hispanic origin, and most of the changes to terminology.

OMB does not accept the Interagency Committee's recommendations concerning the classification of data on the Native Hawaiian population and the terminology for Hispanics, and it has instead decided to make the changes that follow.

Native Hawaiian classification.—OMB does not accept the recommendation concerning the continued classification of Hawaiians in the Asian or Pacific Islander category. *Instead, OMB has decided to break apart the Asian or Pacific Islander category into two categories—one called "Asian" and the other called "Native Hawaiian or Other Pacific Islander."* As a result, there will be five categories in the minimum set for data on race.

The "Native Hawaiian or Other Pacific Islander" category will be defined as "A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands." (The term "Native Hawaiian" does not include individuals who are native to the State of Hawaii by virtue of being born there.) In addition to Native Hawaiians, Guamanians, and Samoans, this category would include the following Pacific Islander groups reported in the 1990 census: Carolinian, Fijian, Kosraean, Melanesian, Micronesian, Northern Mariana Islander, Palauan, Papua New Guinean, Ponapean (Pohnpelan), Polynesian, Solomon Islander, Tahitian, Tarawa Islander, Tokelauan, Tongan, Trukese (Chuukese), and Yapese.

The "Asian" category will be defined as "A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."

The Native Hawaiians presented compelling arguments that the standards must facilitate the production of data to describe their social and economic situation and to monitor discrimination against Native Hawaiians in housing, education, employment, and other areas. Under the current standards for data on race and ethnicity, Native Hawaiians comprise about three percent of the Asian and Pacific Islander population. By creating separate categories, the data on the Native

Hawaiians and other Pacific Islander groups will no longer be overwhelmed by the aggregate data of the much larger Asian groups. Native Hawaiians will comprise about 60 percent of the new category.

The Asian, Native Hawaiian, and Pacific Islander population groups are well defined; moreover, there has been experience with reporting in separate categories for the Native Hawaiian and Pacific Islander population groups. The 1990 census included "Hawaiian," "Samoan," and "Guamanian" as response categories to the race question. In addition, two of the major tests conducted as part of the current review (the NCS and the RAETT) used "Hawaiian" and/or "Native Hawaiian," "Samoan," "Guamanian," and "Guamanian or Chamorro" as response options to the race question. These factors facilitate breaking apart the current category.

Terminology for Hispanics.—OMB does not accept the recommendation to retain the single term "Hispanic." *Instead, OMB has decided that the term should be "Hispanic or Latino."* Because regional usage of the terms differs—Hispanic is commonly used in the eastern portion of the United States, whereas Latino is commonly used in the western portion—this change may contribute to improved response rates.

The OMB decisions on the Interagency Committee's specific recommendations are presented below:

(1) OMB accepts the following recommendations concerning reporting more than one race:

- *When self-identification is used, a method for reporting more than one race should be adopted.*

- *The method for respondents to report more than one race should take the form of multiple responses to a single question and not a "multiracial" category.*

- *When a list of races is provided to respondents, the list should not contain a "multiracial" category.*

- *Based on research conducted so far, two recommended forms for the instruction accompanying the multiple response question are "Mark one or more * * * *" and "Select one or more * * * *"*

- *If the criteria for data quality and confidentiality are met, provision should be made to report, at a minimum, the number of individuals identifying with more than one race. Data producers are encouraged to provide greater detail about the distribution of multiple responses.*

- *The new standards will be used in the decennial census, and other data producers should conform as soon as*

possible, but not later than January 1, 2003.

(2) OMB accepts the following recommendations concerning a combined race and Hispanic ethnicity question:

- *When self-identification is used, the two question format should be used, with the race question allowing the reporting of more than one race.*

- *When self-identification is not feasible or appropriate, a combined question can be used and should include a separate Hispanic category co-equal with the other categories.*

- *When the combined question is used, an attempt should be made, when appropriate, to record ethnicity and race or multiple races, but the option to indicate only one category is acceptable.*

(3) OMB accepts the following recommendations concerning the retention of both reporting formats:

- *The two question format should be used in all cases involving self-identification.*

- *The current combined question format should be changed and replaced with a new format which includes a co-equal Hispanic category for use, if necessary, in observer identification.*

(4) OMB accepts the following recommendation concerning the ordering of the Hispanic origin and race questions:

- *When the two question format is used, the Hispanic origin question should precede the race question.*

(5) OMB accepts the following recommendation concerning adding Cape Verdean as an ethnic category:

- *A Cape Verdean ethnic category should not be added to the minimum data collection standards.*

(6) OMB accepts the following recommendation concerning the addition of an Arab or Middle Eastern ethnic category:

- *An Arab or Middle Eastern ethnic category should not be added to the minimum data standards.*

(7) OMB interprets the recommendation not to add any other categories to mean the expansion of the minimum set to include new population groups. The OMB decision to break apart the "Asian or Pacific Islander" category does not create a category for a new population group.

(8) OMB accepts the following recommendation concerning changing the term "American Indian" to "Native American":

- *The term American Indian should not be changed to Native American.*

(9) OMB accepts the following recommendation concerning changing the term "Hawaiian" to "Native Hawaiian":

- The term "Hawaiian" should be changed to "Native Hawaiian."

(10) OMB does not accept the recommendation concerning the continued classification of Native Hawaiians in the Asian or Pacific Islander category.

- OMB has decided to break apart the Asian or Pacific Islander category into two categories—one called "Asian" and the other called "Native Hawaiian or Other Pacific Islander." As a result, there are five categories in the minimum set for data on race.

- The "Native Hawaiian or Other Pacific Islander" category is defined as "A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands."

- The "Asian" category is defined as "A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."

(11) OMB accepts the following recommendations concerning the use of "Alaska Native" instead of "Eskimo" and "Aleut": "Alaska Native" should replace the term "Alaskan Native."

- Alaska Native should be used instead of Eskimo and Aleut.

- The Alaska Native response option should be accompanied by a request for tribal affiliation when possible.

(12) OMB accepts the following recommendations concerning the classification of Central and South American Indians:

- Central and South American Indians should be classified as American Indian.

- The definition of the "American Indian or Alaska Native" category should be modified to include the original peoples from Central and South America.

- In addition, OMB has decided to make the definition for the American Indian or Alaska Native category more consistent with the definitions of the other categories.

(13) OMB accepts the following recommendations concerning the term or terms to be used for the name of the Black category:

- The name of the Black category should be changed to "Black or African American."

- The category definition should remain unchanged.

- Additional terms, such as Haitian or Negro, can be used if desired.

(14) OMB decided to modify the recommendations concerning the term or terms to be used for Hispanic:

- The term used should be "Hispanic or Latino."

- The definition of the category should remain unchanged.

- In addition, the term "Spanish Origin," can be used if desired.

Accordingly, the Office of Management and Budget adopts and issues the revised minimum standards for Federal data on race and ethnicity for major population groups in the United States which are set forth at the end of this Notice.

Topics for Further Research

There are two areas where OMB accepts the Interagency Committee's recommendations but believes that further research is needed: (1) multiple responses to the Hispanic origin question and (2) an ethnic category for Arabs/Middle Easterners.

Multiple Responses to the Hispanic Origin Question.—The Interagency Committee recommended that respondents to Federal data collections should be permitted to report more than one race. During the most recent public comment process, a few comments suggested that the concept of "marking more than one box" should be extended to the Hispanic origin question. Respondents are now asked to indicate if they are "of Hispanic origin" or "not of Hispanic origin." Allowing individuals to select more than one response to the ethnicity question would provide the opportunity to indicate ethnic heritage that is both Hispanic and non-Hispanic.

The term "Hispanic" refers to persons who trace their origin or descent to Mexico, Puerto Rico, Cuba, Central and South America, and other Spanish cultures. While there has been considerable public concern about the need to review Directive No. 15 with respect to classifying individuals of mixed racial heritage, there has been little comment on reporting both an Hispanic and a non-Hispanic origin. On many Federal forms, Hispanics can also express a racial identity on a separate race question. In the decennial census, individuals who consider themselves part Hispanic can also indicate additional heritages in the ancestry question.

On one hand, it can be argued that allowing individuals to mark both categories in the Hispanic origin question would parallel the instruction "to mark (or select) one or more" racial categories. Individuals would not have to choose between their parents' ethnic heritages, and movement toward an increasingly diverse society would be recognized.

On the other hand, because the matter of multiple responses to the Hispanic ethnicity question was not raised in the

early phases of the public comment process, no explicit provisions were made for testing this approach in the research conducted to inform the review of Directive No. 15. While a considerable amount of research was focused on how to improve the response rate to the Hispanic origin question, it is unclear whether and to what extent explicitly permitting multiple responses to the Hispanic origin question would affect nonresponse to the race question or hamper obtaining more detailed data on Hispanic population groups.

Information on the possible impact of any changes on the quality of the data has been an essential element of the review. While the effects of changes in the Hispanic origin question are unknown, they could conceivably be substantial. Thus, OMB has decided not to include a provision in the standards that would explicitly permit respondents to select both "Hispanic origin" and "Not of Hispanic Origin" options. OMB believes that this is an item for future research. In the meantime, the ancestry question on the decennial census long form does provide respondents who consider themselves part Hispanic to write in additional heritages.

Research on an Arab/Middle Easterner category.—During the public comment process, OMB received a number of requests to add an ethnic category for Arabs/Middle Easterners so that data could be obtained that could be useful in monitoring discrimination. The public comment process indicated, however, that there was no agreement on a definition for this category. The combined race, Hispanic origin, and ancestry question in the RAETT, which was designed to address requests that were received from groups for establishing separate categories, did not provide a solution.

While OMB accepted the Interagency's Committee recommendation not to create a new category for this population group, OMB believes that further research should be done to determine the best way to improve data on this population group. Meanwhile, the write-ins to the ancestry question on the decennial census long form will continue to provide information on the number of individuals who identify their heritage as Arab or Middle Easterner.

E. Tabulation Issues

The revised standards retain the concept of a minimum set of categories for Federal data on race and ethnicity and make possible at the same time the collection of data to reflect the diversity of our Nation's population. Since the

Interagency Committee's recommendation concerning the reporting of more than one race was made available for public comment, the focus of attention has been largely on how the data would be tabulated. Because of the concerns expressed about tabulation methods and our own view of the importance of this issue, OMB committed to accelerate the work on tabulation issues when it testified in July 1997 on the Interagency Committee's recommendations.

A group of statistical and policy analysts drawn from the Federal agencies that generate or use these data has spent the past few months considering the tabulation issues. Although this work is still in its early stages, some preliminary guidance can be shared at this time. In general, OMB believes that, consistent with criteria for confidentiality and data quality, the tabulation procedures used by the agencies should result in the production of as much detailed information on race and ethnicity as possible.

Guidelines for tabulation ultimately must meet the needs of at least two groups within the Federal Government, with the overriding objective of providing the most accurate and informative body of data. The first group is composed of those government officials charged with carrying out constitutional and legislative mandates, such as redistricting legislatures, enforcing civil rights laws, and monitoring progress in anti-discrimination programs. (The legislative redistricting file produced by the Bureau of the Census, also known as the Public Law 94-171 file, is an example of a file meeting such legislative needs.) The second group consists of the staff of statistical agencies producing and analyzing data that are used to monitor economic and social conditions and trends.

Many of the needs of the first group can be met with an initial tabulation that provides, consistent with standards for data quality and confidentiality, the full detail of racial reporting; that is, the number of people reporting in each single race category and the number reporting each of the possible combinations of races, which would add to the total population. Depending on the judgment of users, the combinations of multiple responses could be collapsed. One method would be to provide separate totals for those reporting in the most common multiple race combinations and to collapse the data for other less frequently reported combinations. The specifics of the collapsed distributions must await the results of particular data collections. A

second method would be to report the total selecting each particular race, whether alone or in combination with other races. These totals would represent upper bounds on the size of the populations who identified with each of the racial categories. In some cases, this latter method could be used for comparing data collected under the old standards with data collected under the new standards. It is important that users with the same or closely related responsibilities adopt the same tabulation method. Regardless of the method chosen for collapsing multiple race responses, the total number reporting more than one race must be made available, if confidentiality and data quality requirements can be met, in order to ensure that any changes in response patterns resulting from the new standards can be monitored over time.

Meeting the needs of the second group (those producing and analyzing statistical data to monitor economic and social conditions and trends), as well as some additional needs of the first group, may require different tabulation procedures. More research must be completed before guidelines that will meet the requirements of these users can be developed. A group of statistical and policy experts will review a number of alternative procedures and provide recommendations to OMB concerning these tabulation requirements by Spring 1998. Four of the areas in which further exploration is needed are outlined below.

- Equal employment opportunity and other anti-discrimination programs have traditionally provided the numbers of people in the population by selected characteristics, including racial categories, for business, academic, and government organizations to use in evaluating conformance with program objectives. Because of the potentially large number of categories that may result from application of the new standards, many with very small numbers, it is not clear how this need for data will be best satisfied in the future.

- The numbers of people in distinct groups based on decennial census results are used in developing sample designs and survey controls for major demographic surveys. For example, the National Health Interview Survey uses census data to increase samples for certain population groups, adjust for survey non-response, and provide weights for estimating health outcomes at the national level. The impact of having data for many small population groups with multiple racial heritages must be explored.

- Vital statistics data include birth and death rates for various population groups. Typically the numerator (number of births or deaths) is derived from administrative records, while the denominator comes from intercensal population estimates. Birth certificate data on race are likely to have been self reported by the mother. Over time, these data may become comparable to data collected under the new standards. Death certificate data, however, frequently are filled out by an observer, such as a mortician, physician, or funeral director. These data, particularly for the population with multiple racial heritages, are likely to be quite different from the information obtained when respondents report about themselves. Research to define comparable categories to be used in both numerators and denominators is needed to assure that vital statistics are as accurate and useful as possible.

- More generally, statistical indicators are often used to measure change over time. Procedures that will permit meaningful comparisons of data collected under the previous standards with those that will be collected under the new standards need to be developed.

The methodology for tabulating data on race and ethnicity must be carefully developed and coordinated among the statistical agencies and other Federal data users. Moreover, just as OMB's review and decision processes have benefited during the past four years from extensive public participation, we expect to discuss tabulation methods with data users within and outside the Federal Government. OMB expects to issue additional guidance with respect to tabulating data on race and ethnicity by Fall 1998.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

This classification provides a minimum standard for maintaining, collecting, and presenting data on race and ethnicity for all Federal reporting purposes. The categories in this classification are social-political constructs and should not be interpreted as being scientific or anthropological in nature. They are not to be used as determinants of eligibility for participation in any Federal program. The standards have been developed to provide a common language for uniformity and comparability in the collection and use of data on race and ethnicity by Federal agencies.

The standards have five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. There are two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino."

1. Categories and Definitions

The minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting are defined as follows:

American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."

Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Respondents shall be offered the option of selecting one or more racial designations. Recommended forms for the instruction accompanying the multiple response question are "Mark one or more" and "Select one or more."

2. Data Formats

The standards provide two formats that may be used for data on race and ethnicity. Self-reporting or self-identification using two separate questions is the preferred method for collecting data on race and ethnicity. In situations where self-reporting is not practicable or feasible, the combined format may be used.

In no case shall the provisions of the standards be construed to limit the collection of data to the categories described above. The collection of greater detail is encouraged; however, any collection that uses more detail shall be organized in such a way that the additional categories can be

aggregated into these minimum categories for data on race and ethnicity.

With respect to tabulation, the procedures used by Federal agencies shall result in the production of as much detailed information on race and ethnicity as possible. However, Federal agencies shall not present data on detailed categories if doing so would compromise data quality or confidentiality standards.

a. Two-Question Format

To provide flexibility and ensure data quality, separate questions shall be used wherever feasible for reporting race and ethnicity. When race and ethnicity are collected separately, ethnicity shall be collected first. If race and ethnicity are collected separately, the minimum designations are:

Race:

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

Ethnicity:

- Hispanic or Latino
- Not Hispanic or Latino

When data on race and ethnicity are collected separately, provision shall be made to report the number of respondents in each racial category who are Hispanic or Latino.

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the five racial categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses to the race question. If data on multiple responses are collapsed, at a minimum the total number of respondents reporting "more than one race" shall be made available.

b. Combined Format

The combined format may be used, if necessary, for observer-collected data on race and ethnicity. Both race (including multiple responses) and ethnicity shall be collected when appropriate and feasible, although the selection of one category in the combined format is acceptable. If a combined format is used, there are six minimum categories:

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander

—White

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the six categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses. In cases where data on multiple responses are collapsed, the total number of respondents reporting "Hispanic or Latino and one or more races" and the total number of respondents reporting "more than one race" (regardless of ethnicity) shall be provided.

3. Use of the Standards for Record Keeping and Reporting

The minimum standard categories shall be used for reporting as follows:

a. Statistical Reporting

These standards shall be used at a minimum for all federally sponsored statistical data collections that include data on race and/or ethnicity, except when the collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. Any other variation will have to be specifically authorized by the Office of Management and Budget (OMB) through the information collection clearance process. In those cases where the data collection is not subject to the information collection clearance process, a direct request for a variance shall be made to OMB.

b. General Program Administrative and Grant Reporting

These standards shall be used for all Federal administrative reporting or record keeping requirements that include data on race and ethnicity. Agencies that cannot follow these standards must request a variance from OMB. Variances will be considered if the agency can demonstrate that it is not reasonable for the primary reporter to determine racial or ethnic background in terms of the specified categories, that determination of racial or ethnic background is not critical to the administration of the program in question, or that the specific program is directed to only one or a limited number of racial or ethnic groups.

c. Civil Rights and Other Compliance Reporting

These standards shall be used by all Federal agencies in either the separate or combined format for civil rights and

other compliance reporting from the public and private sectors and all levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories must be specifically approved by OMB for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

4. *Presentation of Data on Race and Ethnicity*

Displays of statistical, administrative, and compliance data on race and ethnicity shall use the categories listed above. The term "nonwhite" is not acceptable for use in the presentation of Federal Government data. It shall not be used in any publication or in the text of any report.

In cases where the standard categories are considered inappropriate for presentation of data on particular

programs or for particular regional areas, the sponsoring agency may use:

a. The designations "Black or African American and Other Races" or "All Other Races" as collective descriptions of minority races when the most summary distinction between the majority and minority races is appropriate;

b. The designations "White," "Black or African American," and "All Other Races" when the distinction among the majority race, the principal minority race, and other races is appropriate; or

c. The designation of a particular minority race or races, and the inclusion of "Whites" with "All Other Races" when such a collective description is appropriate.

In displaying detailed information that represents a combination of race and ethnicity, the description of the data being displayed shall clearly indicate that both bases of classification are being used.

When the primary focus of a report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

5. *Effective Date*

The provisions of these standards are effective immediately for all *new* and *revised* record keeping or reporting requirements that include racial and/or ethnic information. All *existing* record keeping or reporting requirements shall be made consistent with these standards at the time they are submitted for extension, or not later than January 1, 2003.

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Immigration & Naturalization Service
Community/Intergovernmental Program
425 I Street, NW - Room 7236
Washington, DC 20536

202 616 7986; (fax) 202 353 0221

facsimile transmittal

To: Irene Bueno

Fax: 202 456 5581

From: Barbara Huie

Date: 10/06/99

Re: Footnoted Materials

Pages: 16

CC:

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycl

Irene

Attached are the two footnoted items that were not court cases. The Handbook excerpt is in pretty small print. Let me know if it didn't fax well.



OPERATIONS INSTRUCTIONS

OI 287 Field officers; powers and duties.



OI 287.1 Arrest without warrant.

Officers making arrest without warrants or searching conveyances, in addition to being thoroughly familiar with section 287 of the statute, 8 CFR 287 and the relating OI's are also charged with a thorough knowledge and sensible application of the rules set forth in the handbook (Form M-69) "Authority of Officers of the Immigration and Naturalization Service to Make Arrests."

OI 287.1a Arrest for crimes other than immigration offenses.

Because there is no federal common law, officers of the Service may lawfully make arrests for crimes not cognizable under the immigration laws only if the laws of the state or territory in which they are operating permit them as private citizens to make arrests. An officer should make an arrest as private citizen only under extraordinary circumstance for the may be used for damages if his action is unlawful under state law, regard less of his belief that it is lawful. For his own Protection he should be certain that some law, state or federal authorized him to make the arrest. (Added)

OI 287.2 Boarding and searching conveyance within reasonable distance of boundaries and at other points.

(a) **Scope of power to search conveyance.** The power to board and search conveyance under section 287(a)(3) may be used with respect to all conveyances only in those districts having border patrol operations. In the other districts, that power shall, unless prior Central Office approval in obtained be used only with respect to aircraft and vessels within the territorial waters of the United States.

(b) **Power to search conveyance under section 235(a).** The power to board and search conveyance conferred by section 235(a) may be used in all districts. That section confers such power upon power upon immigration officers who have reason to believe that aliens are being brought into the United States upon the conveyance to be searched and places no limitation as t be distance between the conveyance and the external boundary of the United States.

(c) **Authority to establish permanent highway traffic checkpoints.** Regional office plans to establish additional permanent highway traffic checkpoints will be submitted to the Associate Commissioner Enforcement for his review and approval. All requests must meet outstanding Supreme Court decisions relating to Service operation of checkpoints.



OI 287.3 Entering private lands.

Whenever possible patrol officers should inform the owner or occupant of private lands that they propose to avail themselves of their power of access to those lands. If a direct challenge is made of an officer's authorities to carry out duties by a rancher farmer or plant operator, etc., the matter should be immediately brought to the attention of the office supervisor. In most cases consent will be given in advance for extended periods; if not and after all methods of persuasion have failed including efforts by persuasion have failed, including efforts by personal interview and the placing of the landholder on notice of the law by registered mail, officers may gain access to areas within the twenty-five mile area by the most expeditions means, if absolutely necessary. This is an extreme measure and is to be resorted to only on the direction of a supervisory officer after careful consideration. The fences and gates should be repaired immediately and precautions taken to avoid damage to the property.

OI 287.3a Questioning persons during labor disputes. (Revised 12/04/96; Added to INSERTS April 99)

When information is received concerning the employment of undocumented or unauthorized aliens, consideration should be given to whether the information is being provided to interfere with the rights of employees to form, join or assist labor organizations or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe work places; to receive compensation for work related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.

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CHAPTER 9

HIGHWAY TRAFFIC INSPECTION

Traffic check is a border patrol operation that consists of the examination of occupants of vehicles on roads and highways as to their right to be or remain in the United States. It includes the search of such vehicles if necessary to locate illegal aliens.

PURPOSE

The primary purpose of a traffic check operation is to apprehend illegal aliens who have managed to evade apprehension at the border and are attempting to travel to interior locations. Although the inspection of vehicular traffic for illegal aliens is the Service's main concern, patrol agents assigned to this operation often encounter violators of other state and federal laws. Any assistance rendered to other agencies is incidental to their duties.

AUTHORITY

Section 287 of the Immigration and Nationality Act provides that "any officer . . . of the Service . . . shall have the power without warrant . . . within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicles." "Within a reasonable distance" is defined in 8 C.F.R. 287.1(a) as within 100 air miles of any external boundary, or a shorter distance fixed by the district director. Upon recommendation of the district director, the Commissioner may declare a distance of more than 100 air miles to be reasonable.

Section 235(a) also provides authority to search, when there is reason "to believe that aliens are being brought into the United States" in the conveyance. Section 287(3) applies only to those districts that have border patrol operations, while Section 235(a) applies to all areas of operation.

The broad powers specified in the Act have been defined by various Courts of Appeal and the Supreme Court of the United States. Patrol agents must be very familiar with--and strictly adhere to--the controlling decisions that apply to their area of operations. In addition they must differentiate the parts of those decisions that apply to the stopping of vehicles to examine occupants from the parts that apply to the searching of those vehicles stopped.

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Generally, at a traffic checkpoint (except a temporary site within the Ninth Circuit), patrol agents may routinely stop all vehicles for brief questioning of the occupants, and may selectively refer vehicles to a secondary area for further limited inquiry. (U.S. v. Martinez-Fuerte)

The stopping of a vehicle by a "roving patrol unit", or at a temporary checkpoint within the Ninth Circuit, must be based on "specific articulable facts, together with rational inferences therefrom, reasonably warranting suspicion that the vehicle contains aliens illegally in the country." (U.S. v. Brignoni-Ponce)

The search of a vehicle at a traffic checkpoint, or subsequent to a lawful "roving patrol stop", must be based on clear probable cause or the consent of the driver or owner, unless the traffic checkpoint has been determined to be the "functional equivalent of the border." (Almeida-Sanchez v. U.S., and U.S. v. Ortiz)

SELECTION OF SITES

The location of a traffic check site is considered by the courts in assessing the validity of a checkpoint. Site selection is left largely to the discretion of the Border Patrol. Because the cases developed at traffic checkpoints are subject to judicial review, however, the guidelines furnished by the courts must be followed. Consideration of locations should therefore include: minimal interdiction of local commuting traffic; the continuing strategic importance of the location for the coordination of traffic check operations; confluence of roads and trails that do not pass through a port of entry and the route of travel away from the border; terrain that restricts vehicle passage around the checkpoints; and a stretch of highway that is compatible with safe operation. Requests to establish new permanent checkpoints in accordance with these guidelines must be submitted through official channels to the Associate Commissioner, Enforcement (COENF), for review and approval.

Court decisions have differentiated between permanent and temporary checkpoints, even though both operate in the same way. The two types are distinguished by the frequency of operation, the facility and equipment used, and the permanence of signs, buildings, and so forth. Permanent sites generally are operated on regular basis in the same location, may have electricity, sensor devices, or buildings, and are highly visible to the public. Temporary sites are established at irregular intervals, can be relocated easily to confuse law violators, and are utilized when and wherever needed in the conduct of anti-smuggling and related operations.

(REV. 4/1/85)

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EQUIPMENT

The amount and type of equipment needed vary with conditions and volume of traffic. A minimum set of traffic check equipment for a permanent site on a highway with a heavy volume of traffic is listed below. The same set, with varied arrangements, is required for temporary sites with little traffic.

1. Vehicles

- a. One traffic check van or panel truck, equipped with racks and holders for signs, cones, lights, batteries, and other equipment.
- b. One sedan, equipped with siren and emergency lights of the color specified by state regulations.

2. Signs

- a. Four diamond-shaped STOP AHEAD signs (yellow with black).
- b. One octagonal STOP sign (red with white).
- c. Two oblong THANK YOU signs (green with white).
- d. One SLOW sign (always used on undivided highways and on divided highways when necessary).
- e. One NO PASSING sign (always used on undivided highways and on divided highways when necessary).

3. Cones

- a. Fifteen or more rubber traffic cones.

4. Lights

- a. One set of floodlights on top of traffic check van or panel truck (if equipped with generator for this purpose or if commercial electrical power is available).
- b. One set of red and/or yellow emergency vehicle lights on panel truck as required by state regulations.
- c. Two yellow flashing lights for two STOP AHEAD signs.

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- d. Two red flashing lights for the stopping point.
 - e. Two white floodlights to illuminate the first two STOP AHEAD signs.
5. Batteries
- a. A sufficient quantity of batteries, with reserves, to light all battery-powered lights.
6. Rumble Strip
- a. Three strips of hard rubber hose to lay across traffic lanes some distance ahead of the first set of signs. (Rumble strips are generally prohibited as dangerous on interstate highways, and may be used only if allowed by the state on other highways.)
7. Stop and Light Stands
- a. Five sign stands.
 - b. Two light stands.
8. Other Equipment
- a. First-aid equipment, a fire extinguisher, and emergency flares should be in the traffic check vehicles.

PHYSICAL ARRANGEMENTS

--As mentioned earlier, certain features are common to permanent and temporary sites. All sites must be located with sufficient slowing and stopping space. The shoulders of the highway at the checkpoint should provide ample parking space for buses, trucks, and other vehicles pulled off for further questioning of occupants. This parking space, with one exception, should be to the right side of the highway. On divided highways, with one or more lanes of traffic moving in both directions separated by a median, the median may be used if it is safe and wide enough. In such cases, vehicles may be pulled off to the left, and later funneled back into the traffic stream from that side.

(REV. 4/1/85)

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Multilane Divided Interstate Highways

Several permanent checkpoints are located on major highways, such as the I-5 checkpoint at San Clemente, California. These sites, selected by sector staff in consultation with state highway engineers, include as many characteristics of an ideal checkpoint as possible. Traffic can be checked through a checkpoint, like San Clemente at a rate of nearly 3,000 vehicles per hour. Weather, traffic, and available personnel are the controlling factors of checkpoint setup. There is a strict procedure for activating and securing checkpoints.

Four Lane Divided Highways

Two methods are used to check traffic on a four-lane highway when two lanes are being checked. One is to check both lanes simultaneously; the other is to funnel all traffic into one lane for checking. The method of setting up the equipment when both lanes are being checked is shown in Exhibit 1, and the other in Exhibit 2 at the end of this chapter. These exhibits outline minimum standards and should be modified with additional equipment to meet the needs of the particular location.

As shown in Exhibit 1, two diamond-shaped STOP AHEAD signs (yellow with black), are placed on each side of the highway at least one-half mile from the actual stopping point. At night, these two signs are illuminated with white flood lights, affixed to the sign stands or to a base.

If rumble strips are deemed necessary and approved by the state, they should be placed across the highway, eight to ten feet apart, beginning 100 yards beyond the first two signs. About 348 yards beyond the first two signs, two more identical STOP AHEAD signs are placed on each side of the highway; these have yellow flashing lights affixed to the tops. Beginning 150 yards beyond this point, and continuing for the next 50 yards, traffic check cones are evenly spaced to the stopping point, with five cones along each side of the highway and five along the center line. At the last cone, along the center line of the highway, is placed an octagonal STOP sign (red with white); parallel with this sign, on each side of the highway, is placed one stand with a flashing red light. The traffic check van should be parked at least 10 feet off the highway to the right of the direction of traffic flow, facing the highway and the STOP sign. The chase car, equipped with proper emergency lights, should be parked parallel to the traffic check van. About 175 yards beyond the actual stopping line, an oblong THANK YOU sign is placed on all side of the highway.

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On divided highways, patrol agents engaged in the actual checking and questioning of vehicle occupants should stand on the driver's side of oncoming vehicles. As noted earlier, when there is a wide dividing strip between traffic lanes, it is sometimes feasible to use a parking space on this median. In these cases, the physical setup is the same, except that the two vehicles are parked on the opposite side of the lanes being checked.

During hours of darkness, and when traffic can be funneled into one lane, the physical setup is changed to that shown in Exhibit 2.

This is done during hours of darkness, and whenever possible at other times, because it is much safer for patrol agents engaged in the operation. When checking two lanes, as shown in Exhibit 1, the possibility of accidents and hazards to agents standing on the highway, in case a vehicle fails to stop, is much greater.

When traffic is being channeled into one lane, as shown in Exhibit 2, the first two STOP AHEAD signs, rumble strips (if used), and the second two STOP AHEAD signs with flashing yellow lights are placed in the same position and at the same distance from the stopping point. In this case, however, the positions of the traffic cones, the flashing red lights with stands, and the red STOP sign are changed as follows: the STOP sign is placed on the right edge of the right-lane traffic; one of the flashing red lights and stands is placed on the center line of the highway; five traffic cones are evenly spaced to cover about 50 yards in front of the STOP sign; and nine or ten traffic cones are lined up back from the flashing red light in the center of the highway, and diagonally across the lane to be cut off, to a point about 100 yards back to the left side of the highway. Again, if the parking area is on the opposite side, the positions of the cones, flashing light, stop sign, and two vehicles are reversed to the other side. In this situation, patrol agents doing the actual checking and questioning of vehicle occupants stand near the flashing red light in the center of the highway.

Two-Lane Undivided Highways

As noted previously, temporary sites are generally located on highways with a lesser volume of traffic at varied locations and times. Most often these are highways with two single lanes of traffic moving in opposite directions and no dividing strip. The amount of equipment required depends on the volume of traffic and the best judgment the patrol agents involved.

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In the past, this type of site has been worked with only a vehicle, flashing with a red light, and STOP sign. In the interest of safety, however, this no longer is considered adequate equipment at any time (except in emergencies). Luminous traffic cones, along with warning signs before the STOP sign, should always be used.

The STOP sign should be placed on the shoulder immediately adjacent to the right edge of the right traffic lane. It should have a flashing red light on top.

The traffic check van should be parked facing the highway, at least 10 feet off the highway, opposite the STOP sign. The chase car, equipped with proper emergency lights, should be parked parallel to the traffic check van. A space should be provided on the opposite side of the van to pull vehicles off for questioning occupants or searches. Floodlights should be available on the van to light the search area. The THANK YOU sign should be placed on the shoulder about 175 yards beyond the checkpoint. A NO PASSING sign should be placed at least 250 yards beyond the checkpoint on the shoulder of the opposite side of the road. A diamond-shaped SLOW DANGER sign lighted, by a yellow flashing light, should be placed on the shoulder opposite the checkpoint and about 50 yards beyond the NO PASSING sign.

Four traffic cones should be placed about ten yards apart beyond the checkpoint. The ten traffic cones should be placed on the center line about five yards apart on the approach side.

It should be noted that traffic cones are used along the center line beyond the stopping point, as well as warning signs for the opposite-bound traffic lane. These are especially important at night, when the headlights of inspected vehicles will interfere with drivers traveling in the opposite direction. At least two signs, should be placed for this purpose on the shoulder of the highway: both with flashing yellow lights, a SLOW DANGER sign and a NO PASSING sign placed 250 and 200 yards apart, respectively, above the stopping point in the lane opposite from the one being checked. The rumble strip indicated in Exhibit 3, if permitted by state authorities, is an added safety factor.

PROCEDURE AT CHECKPOINT

Chief patrol agents are responsible for fully training patrol agents in proper traffic check and safety procedures. When new patrol agents report for duty, their previous traffic check experience should be ascertained, with training provided as necessary.

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A proper approach, a thorough but rapid inspection, and a quick decision to conduct further interrogation or allow a vehicle to proceed are the requirements of a successful traffic check operation. Courtesy to the traveling public is mandatory, and every effort must be exerted to avoid antagonizing persons at all times. While patrol agents need never be apologetic for the work they are doing, a respectful attitude must be maintained at all times. Unnecessary conversation with the public causes undue delays, and frivolous remarks must be avoided.

All patrol agents at a traffic checkpoint should be in the full dress uniform prescribed for the locality and the season. Uniforms should be in such condition that they may be worn with pride.

Safety Considerations

The safe operation of traffic checkpoints is of the utmost importance. Neither the motoring public nor patrol agents should be subjected to hazards beyond those that are inherent in any border patrol operation or in any other activity involving heavy moving objects.

Traffic checkpoints must be selected to allow oncoming traffic a clear, unobstructed view of the operation for at least one-half mile. This is considered the minimum safe distance for slowing and stopping.

Warning signs must not be obstructed by trees, bushes, or other signs. During hours of darkness, sufficient flashing and/or other lights should be used to draw the attention of motorists to the signs. Red lights used at the stopping point should be highly visible, but constructed so that drivers moving in the opposite direction will not be confused by them. Motorists must be clearly aware they will be required to stop.

If the "point" patrol agent stands on the driver's side of the vehicles to be checked, care should be taken that this position in relation to the STOP sign will not interfere with any movements should it become necessary to evade an oncoming vehicle. As vehicles come to a stop, the agent should watch occupants closely. If a flashlight is used, it should be in the hand opposite the sidearm. Fortunately, there are very few instances in which the use of a firearm is necessary, but, in event of need, the gun hand should be free.

After vehicles have stopped, the patrol agent should give an identifying statement with the purpose of the stop. Any time the questioning goes beyond the routine, vehicles should be directed out of the lane of traffic to the secondary area.

(REV. 4/1/85)

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A second patrol agent should be stationed near the patrol vehicle to watch the occupants of vehicles closely as they approach, remaining constantly on the alert for other vehicles so that other patrol agents can be warned of imminent danger.

Buses to be inspected should be directed out of traffic. On boarding a bus, agents should secure the attention of passengers by an identifying state it with the purpose of the stop. Passengers should be checked as rapidly as possible. If passengers are taken into custody, it should be done with as little fanfare as possible; any baggage must be secured, and the driver requested to revalidate tickets.

Patrol agents walking down the aisle of a bus are in close proximity to passengers on both sides. Care should be taken to have the sidearm strapped in the holster and the gun hand free at all times.

Patrol agents who stop vehicles and interrogate the occupants should be rotated frequently to avoid the fatigue inherent in this type of operation.

Operations should be suspended if conditions become such that either the patrol agents or the traveling public are in danger of being injured through an accident. Examples of such conditions include: an accident in the vicinity; the volume of traffic becoming too heavy; slick roads; inclement weather, such as fog, heavy rain, or snow; and icy road conditions. In marginal situations, additional warning devices should be used to alert motorists of the checkpoint and road conditions, thereby providing a greater margin of safety and allowing the traffic check operation to continue. These devices might include an additional STOP AHEAD sign placed 300 yards ahead of the first such sign, which is equipped with a flashing yellow light and placed 100 yards ahead of the STOP sign. While a conscientious appraisal must be made as to whether operations should be discontinued, it is better to suspend checking than to continue under conditions that could result in an accident or injury. The decision as to whether traffic check should be terminated rests with chief patrol agents, but may be delegated to patrol agents in charge of the station or supervisory patrol agents in charge of the shift. If these patrol agents cannot be contacted, the decision shall be made by patrol agents in charge of the traffic check detail.

As indicated in Exhibits 1, 2, and 3 at the end of this chapter, two vehicles are generally used at a checkpoint. The first (a traffic check van, if available) should be positioned near the STOP sign for ready access to the radio, and the second parked alongside, in a position to facilitate departure

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in either direction. This is required in case a vehicle runs through the checkpoint or turns around before arriving. In the event of pursuit, it is emphasized that safety is the first consideration; every possible effort should be made to avoid accidents. It is far better to end the pursuit than to be involved in an accident attempting to make an apprehension.

ASSISTANCE AT ACCIDENTS

While there are no legal requirements that patrol agents take any action in the case of automobile accidents, the Service recognizes a moral obligation to render assistance if other police agencies are not in attendance. In all cases, the appropriate law enforcement agency must be summoned at once. The extent of any action is governed by the exigencies of the situation. Generally, appropriate steps include the administering of first aid to any injured parties, traffic control, and other assistance that can be rendered to regular traffic officers. All pertinent information should be furnished to the other agency on notification, particularly regarding injuries or deaths, the need for an ambulance or wrecker, and whether the roadway is blocked. In rendering assistance, corpses should not be moved without direction of a coroner or other competent authority unless it is absolutely necessary.

CONCLUSION

Pursuant to P.L. 89-564 the U.S. Department of Transportation has developed a manual of Uniform Traffic Control Devices, which has been adopted as a national standard for all classes of highways.

All border patrol traffic locations, signs, and other equipment should conform to state and federal instructions set out in the manual. The decision to use particular signs or devices at a particular location should be made on the basis of an appropriate engineering study. Federal, state, or county highway department engineers should be consulted and asked for assistance.

In all phases of government endeavors, public relations is of considerable importance. In accomplishing the Service's mission this is particularly true, because many law-abiding citizens must be contacted to discover a few violators. The Service's public image is at greatest risk in traffic check operations. For this reason, patrol agents should be ever-alert to the safest and quickest way of getting the job done with a minimum of inconvenience to the traveling public and a maximum benefit to the enforcement of the immigration laws.

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FOUR LANE DIVIDED HIGHWAY

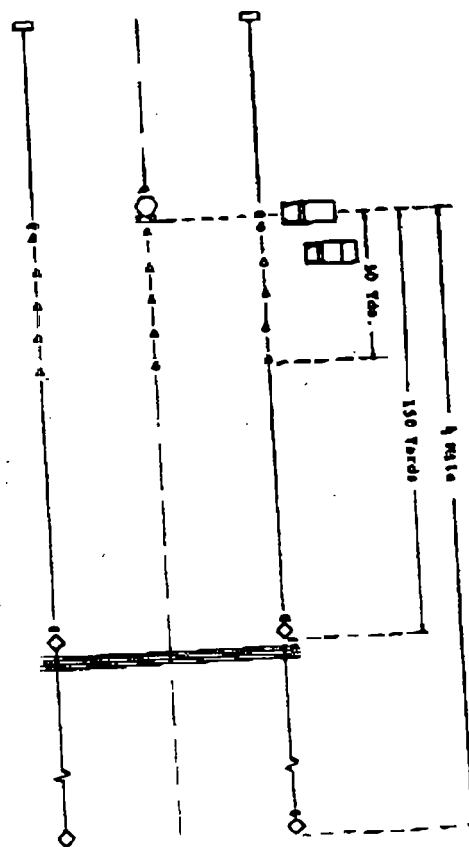


EXHIBIT NO. 1

April 7, 1977

TM-16

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TWO LANE UNDIVIDED HIGHWAY

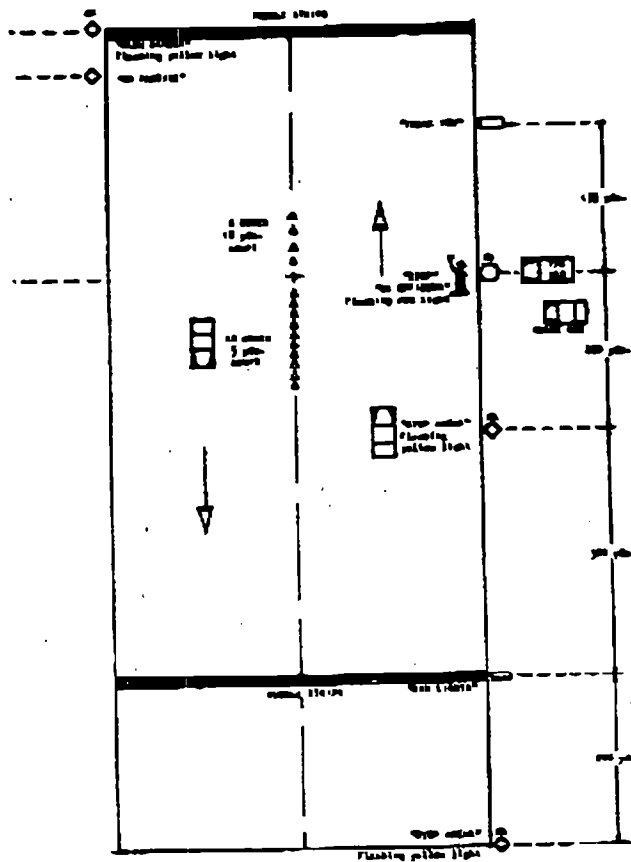


EXHIBIT NO. 3

TM-16

April 7, 1972

THE NEW YORK TIMES, SUNDAY, APRIL 25, 1999

Correspondence / Black and Middle Class

Both a Victim of Racial Profiling — And a Practitioner



Nancy Carpenter

By STEVEN A. HOLMES

WASHINGTON
THE spring day was bright and sunny enough for sunglasses, yet cool enough to require a sweatshirt and baggy sweat pants. As I walked along a busy street in the predominantly white northwest Washington neighborhood where I lived, I hardly thought that my clothing or, more important, my dark skin could attract the attention of the police.

But sure enough, after a few blocks, a brown and white cruiser from the Capital Police suddenly pulled alongside. A white officer jumped out and demanded to know what I was doing there. I live here, I stammered, somewhat stunned. Incredulous, he asked to see some identification. I produced a driver's license verifying that I lived a few blocks away — that this was, indeed, my neighborhood. He seemed satisfied. I was not. "Why are you stopping me?" I asked.

"There was a burglary in the area and you fit the description of the suspect," he answered, sounding surprised at what he clearly regarded as a cheeky question. "Oh, yeah?" I replied. "Where?" He quickly gave me the name of a street where the crime allegedly had occurred and departed, leaving me standing on the sidewalk, seething. I later called the local police precinct to check out his supposed burglary, and was not surprised to find out that there was no report of any break-in on that street. The officer's explanation, I assumed, had been concocted to cover up what really had happened — a random stop of a black man who to the officer's eye did not fit the area.

In the wake of the fatal shooting last month of an unarmed West African immigrant by members of the Street Crimes Unit of the New York City police, the issue of whether the police target minorities for questioning and searches has been thrust onto center stage. Figures compiled by the New York police show that in the 20 precincts where the Street Crimes Unit has been most active, 63 percent of the people stopped and frisked were minorities. Last week investigators in New Jersey announced that a two-year study of random stops on the New Jersey Turnpike showed that roughly three-fourths of the people whose cars were halted and searched by state troopers were black or Hispanic.

The numbers are stark, and to civil rights leaders and liberal politicians proof of the use of racial profiling by police. But the figures give little sense of the depth of anger of people like me sin-

gled even evidently because of race or ethnicity. The incident left me frustrated and irate. (At the time I was in my mid-40's but often could pass for someone much younger.) I thought: I'm a middle-class black man who works hard, pays his taxes, keeps out of trouble and tries to treat people with dignity and respect. Why should I be an object of suspicion? I railed at the injustice of it all. Yet, as my anger cooled, I asked myself a harder question: Hadn't I done the same thing myself?

I thought back to the time back in the early 1970's when, as a college student in New York City, I supported myself by driving a taxi at night. In many ways it was a great job for a student — flexible hours, good pay, a way to meet interesting people, especially women. It could also be dangerous. In three years, I was held up twice; once at gunpoint, once when I let a passenger sit next to me in the front seat and he put a knife to my throat. Both times the perpetrators were young black men.

Fear chastens you. I did not quit driving a taxi. I liked the job too much. But I became more choosy about who I let in my cab. I still picked up black women, older men, couples, families and men dressed in suits. But my sense of tolerance and racial solidarity was tested every time a casually dressed young black man, especially one in sneakers, tried to hail my cab. Most times, I drove right by. I sometimes wondered about their reaction, but I kept thinking that if I guessed wrong, I could pay for my mistake with my life.

LIKE it or not, I was engaging in my own form of racial profiling. But I rationalized. Racism, I told myself, would be to decline to pick up every black person who hailed my cab. What I was doing was playing the odds, playing it safe, taking no chances. Looking back, I realized that those I declined to pick up looked remarkably like I did when the cop stopped me as I walked down a Washington street.

As I contemplated this, my anger spread to many targets: the police officer who had confronted me, and the young black hoodlums whose criminal behavior had made the officer suspicious of all African-American men in the first place. And I resented the country's history of racism, which helped to insure that the presence of a black person in a leafy, affluent neighborhood of Washington was still a rare sight.

The nexus of race, crime and stereotyping raises difficult questions that are often ignored. Even as crime rates tumble, young black men still commit a disproportionate share of serious

offenses, a fact that is driven home in metropolitan areas by television's seemingly incessant airing of crime news. And whether the fear stems from real experience or media-driven perceptions, people — police and civilian, white and black — play the odds all the time when it comes to how they view and respond to young black men.

Too often the country fails to acknowledge how widespread the practice is. Two years ago, at a town hall meeting on race in Akron, Ohio, President Clinton asked a group of whites who had joined him onstage whether they felt fear when they saw a young black man on the street who was not well dressed. A number sheepishly raised their hands. Mr. Clinton thanked them for their honesty. I sat there wondering, "Mr. President, why don't you ask the black participants the same question?"

Even the seemingly clear-cut statistics on racial profiling don't tell the whole story. New York's Street Crimes Unit did indeed stop and frisk a disproportionately large number of black men. Yet in those same precincts, 71 percent of the suspects, as described by their victims, were black men.

On the flip side, New Jersey state troopers arrested or seized contraband from 13.5 percent of the minorities whose cars were searched on the turnpike, compared with 10.5 percent of the whites. At first blush that seems like a sizable difference. But then consider that the troopers stopped three times as many non-whites or Hispanics as others. Racial profiling hardly seems to be producing enough arrests to justify the effort — or the heartache.

That may be the biggest argument against targeting some people as suspects based on their race, beyond the Constitutional argument of equal treatment before the law. With crime rates tumbling in virtually every big city in the land, racial profiling may have outlived its usefulness. Perhaps if I were a young New York City cab driver today I would not be as wary of young black men as I once was. With the streets safer, it could be time for the public and the police to shed the kind of attitude I held nearly three decades ago — the attitude that followed me into middle-aged respectability on a Washington street.

How Much Do Charity Spend o

By Lindette Macharia,
National Society of Tu

IT'S HAPPENED TO ALL OF US. We that we admire or have supported also wonder how much of our charity's mission. How much we raising costs? We might even try to find on fund raising. Is twenty cents from cents? Fifty cents?

These are all good questions to ask. money to this charity; we expect it to be important factors we need to realize v

Charities have operating costs, just like use their profits to pay such costs, contributions. We would all like to our contribution will support the ch part of our gift will be used to offset:

So then, what is a reasonable ratio to which spends only ten to twenty cent doing something right. Conversely, a ninety cents on fund raising for ev reexamine its policies and expense: these numbers are not absolute. My primary reason that most fund-raising lines on what is and is not a fair fund.

For example, take a new charity starti many of us will be familiar with the o of money will be raised. Consequent are likely to be quite high. But a seco who gave the first time, will probably lower cost of fund raising.

Costs for special events (e.g. galas, higher for the first several years as cha way of holding the event. Usually, cost years as the public becomes familiar efficient and effective methods of run

The Combined Federal Campaign and: under their umbrella spend on fund r: for general management and fund r standards set this ceiling at 35%. Th of difficult decisions for donors. Is fund raising for a special event in its se What about an organization with annua to year?

Given these factors (and not even m type of charity, type of donor, and tin have dramatically different fund-raisi involved. Fund-raising cost summari out of context, which is precisely wh not always be the sole factor in decid

How then can donors make educated give? One way is to take advantage of by charities — not just of their cost regulations recently issued by the IRS charity's Form 990, the financial repo to prepare annually. Donors should 990 when making their decisions. M the Internet for even easier access.

So when we receive that phone call e need to ask questions before contrib costs are, but understand that costs charity's fund-raising costs as the sol give is like choosing the best students one class. We give away our money to find out as much as we can about t this in mind can help us make the b great tradition of philanthropy.



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The Nation
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Concerns on Profiling Continue to Simmer

Despite Promises by Whitman, Legal and Political Threats Persist

By DAVID KOCJENIEWSKI
TRENTON, April 21 — A day after Gov. Christine Todd Whitman vowed to revamp the New Jersey State Police to end racial profiling, there were few indications today that the Governor's assurances had eased the public furor over the issue or defused the political threat it poses to her nominee to the State Supreme Court, Attorney General Peter G. Verniero.

After denying for years that troopers used race as the basis for stopping motorists on the New Jersey Turnpike, the Governor said yesterday that she was both disappointed and surprised to learn that it was taking place. The administration released a 112-page preliminary report, which included a plan to prevent the illegal stops and searches.

Civil rights leaders welcomed the Governor's acknowledgment of the racial profiling, saying it belatedly validates thousands of complaints minority motorists have made for more than a decade. But the executive director of the Black Ministers Council of New Jersey, the Rev. Reginald T. Jackson, said the profiling report still understated the breadth of the racial problems on the force and failed to address the more complex problem of changing the culture of the state police.

Inside the New Jersey State House, where the issue has been simmering for nearly a year, there were also signs today that support for Mr.

Verniero's nomination may be softening among the Governor's fellow Republicans. Senator Jack G. Sinagra, a Republican from Edison, said today that he would oppose Mr. Verniero's nomination unless the Attorney General won the recommendation of the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee.

And in a move likely to heighten pressure on the Governor, Mr. Jackson also announced today that the Rev. Al Sharpton would speak on Friday at a rally on the steps of the State House. The rally will mark the one-year anniversary of an incident in which troopers shot and wounded three unarmed minority men after a traffic stop on the turnpike. Mr. Jackson said the protesters would demand a public apology from Mrs. Whitman and present a list of proposed changes to state police policy.

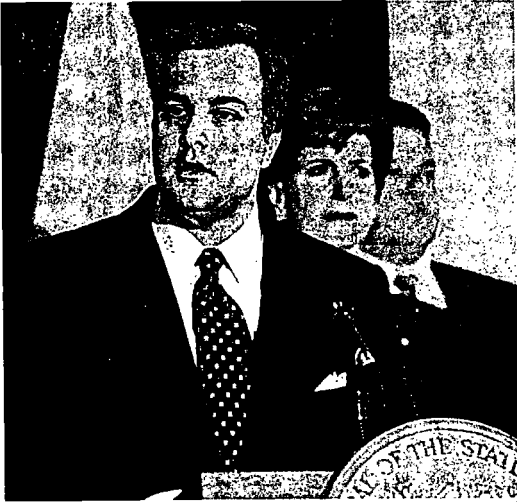
"The problem isn't just a few bad apples," Mr. Jackson said. "There's a systemic problem of racial discrimination throughout the state police department."

Possible legal fallout from the report was developing in law offices around the state, as civil rights lawyers and defense lawyers busily dissected the report to prepare a class-action lawsuit on behalf of hundreds of motorists who they say were subjected to illegal traffic stops and searches. Some criminal defense lawyers said they would also use the Attorney General's findings to challenge convictions of dozens, perhaps hundreds, of black and Latino clients who were arrested after searches by troopers on the turnpike and other state toll roads.

Mr. Verniero's approval by the state bar may be in jeopardy because the appointments panel last week postponed a vote on his qualifications after some members said he did not have the necessary judicial experience. The panel is scheduled to meet again on Monday, the same day Mr. Verniero is expected to appear before the State Senate's public hearings on racial profiling.

Although the Senate President, Donald T. DiFrancesco, issued a statement today praising the Attorney General's response to the profiling allegations, Mr. Sinagra's statement made him the first Republican to publicly declare his willingness to oppose Mr. Verniero's confirmation. Republicans control the State Senate, 24-16, and Mr. Verniero needs 21 votes to win approval.

Democrats also sharpened their attacks on the Whitman administration's response to complaints about



Attorney General Peter G. Verniero with Gov. Whitman at a news conference Tuesday announcing a finding of profiling by troopers.

profiling. The Senate minority leader, Richard J. Codey, accused the Governor and Mr. Verniero of "making a bad situation worse" by waging a three-year court battle to appeal a 1996 ruling by a Gloucester County judge who found persuasive evidence of racial bias by troopers. And Assemblyman Leroy J. Jones, a Democrat from East Orange and a member of the Black and Latino Caucus, said that the Attorney General's own statistics showed that delay subjected thousands of minority motorists to illegal traffic stops and searches.

At state police headquarters, the Acting Superintendent, Lt. Col. Michael A. Fedorko, huddled with his commanders to implement the Governor's reforms, a spokesman said. The state's 2,700 troopers are scheduled to begin their annual in-service training program on May 23, said the spokesman, John Hagerty, and the curriculum will now focus on traffic stops and the ban on racial profiling.

New Housing Will Benefit Mentally Ill

Pataki and Giuliani Reach a Compromise

By RAYMOND HERNANDEZ
ALBANY, April 21 — Ending protracted dispute, Gov. George Pataki and Mayor Rudolph W. Giuliani announced today that they had reached a compromise on expanding a landmark program for housing mentally ill homeless people in New York City.

The agreement requires that the city and state spend slightly more than \$100 million to provide 1,000 apartments for mentally ill homeless people over the next five years, but falls short of the number of apartments that supporters of the program had sought.

The first phase of the program, known as "New York/New York," has been widely hailed for moving almost 4,000 mentally ill people from the city's streets and out of its crowded homeless shelters. The first phase began in 1990 under an agreement reached by Gov. Mario M. Cuomo and Mayor David N. Dinkins. It provided 3,814 apartments, with the state paying two-thirds of the construction costs and the city paying the rest.

But until today, Mr. Pataki and Mr. Giuliani had been unable to agree on a plan that would extend the program, arguing, for instance, over how many additional apartments to build and how to divide the costs.

Mr. Giuliani, a strong supporter of the program, had been pushing to build 2,500 apartments, but it would have cost the state far more money than the Pataki administration was prepared to spend. In the end, the deal reached today does go nearly as far as the city originally wanted.

But in a statement released both men late this afternoon, they hailed the agreement as a victory on all sides, saying that it would, through turnover, provide temporary housing for as many as 2,000 mentally ill homeless people over five years.

"Today marks a new beginning; the lives of many of our fellow New Yorkers who are living in emergency

Rights Inquiry On 2 Arrests In the Slaying Of an Officer

By ROBERT HANLEY
HACKENSACK, N.J., April 21 — Federal authorities have started an investigation into possible civil rights violations in the arrests of two men during the tangled search for the killer of a police officer in Orange, N.J.

Both men were mistakenly identified as the suspect in the slaying.

Raising Voices About Noises

In case you hadn't heard, International Noise Awareness Day was yesterday.

At bus and train stations around New York City, volunteers distributed brochures on hearing loss and its prevention, complete with packets of ear plugs.

And at the band shell in Central Park, early afternoon was a picture of sunny serenity. Birds chirped and parkgoers snoozed on benches, lulled by the hum of in-line skaters wearing headphones.

Anti-noise officials set up

PUBLIC LIVES

Radio Reporter Who's Not Easy-Listening

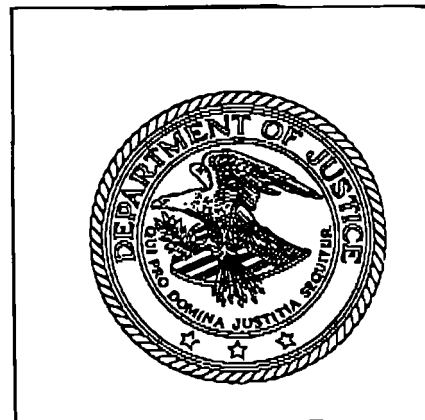
By JOYCE WADLER
IT would be nice to say that Amy Goodman, the award-winning Pacifica Radio producer and reporter who uses grant money or her own frequent-flier miles for overseas assignments and who has been beaten and threatened with execution for her reporting of human rights violations, has the universal affection of her colleagues.

The truth is that when Ms. Goodman opens her mouth at a press conference, it is not only the politicians who wish she would shut up.



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Special Assistant to the President

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CITY/STATE: Washington, D.C.
RECIPIENT TEL.: 456-5568
RECIPIENT FAX: 456-5581

SUBJECT: **Racial Profiling Report**

SENDER: **Brian A. Jackson**
Associate Deputy Attorney General

REMARKS/COMMENTS:

TOTAL NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 32

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**Problem Solving Group on
Law Enforcement
Stops and Searches
Report on the Proceedings**

U.S. Department of Justice



December 1998

Problem Solving Group on Law Enforcement Stops and Searches

Report on the Proceedings

U.S. Department of Justice

Attorney General
Janet Reno

Deputy Attorney General
Eric H. Holder, Jr.

Associate Attorney General
Raymond C. Fisher

Acting Assistant Attorney General
Bill Lann Lee
Civil Rights Division

Director
Joseph E. Brann
Office of Community Oriented Policing Services

December, 1998

Problem Solving Group on Law Enforcement Stops and Searches Report on the Proceedings

The U. S. Department of Justice (DOJ) sponsored a meeting of the Problem Solving Group on Law Enforcement Stops and Searches on December 9 and 10, 1998, at the Crystal City Marriott, Arlington, Virginia. The 70 invitees included members of the problem solving group, as well as observer-participants, representing local, state, and federal law enforcement agencies; DOJ components and other federal agencies; civil rights, training, and law enforcement organizations; and researchers. The meeting was funded by the Office of Community Oriented Policing Services (COPS). The attendee list is attached. This report is organized by agenda topic; however, subtopics have been added for readability and to highlight key areas of discussion. By agreement with participants, comments are not attributed to individual speakers, with two exceptions: (1) planned remarks by speakers listed on the agenda, and (2) summaries by Dr. Mark Moore, who was engaged to offer his perspectives on various segments of the discussion, and by Dr. Sheldon Greenberg, who served as meeting facilitator. A copy of the meeting agenda is attached.

Opening Remarks

Eric H. Holder, Jr.
Deputy Attorney General

Mr. Holder called the meeting an important opportunity to "shed our defenses and have a frank exchange" about police stops and searches, and in particular, about racial profiling. "Complaints are still too common," he said. "Discriminatory stops divide communities and make police and prosecutors' jobs more difficult." Recalling his experiences as a judge, he emphasized the negative impact discriminatory stops have on potential witnesses, causing them to distrust criminal justice officials and making them reluctant to cooperate. "People using our airports and highways must be free to travel without discriminatory stops or intrusive law enforcement encounters," he said, "yet our young people are often subjected to discriminatory stops." He noted that the War on Drugs may have encouraged this, but that if the problem is not addressed, victims will file even more lawsuits, and more tax money will be spent on these cases.

Mr. Holder also noted that the legislation introduced by Representative Conyers in last year's Congress would have required the Justice Department to acquire data on the number and race of individuals subjected to traffic stops by police. Mr. Holder emphasized the importance of bringing together law enforcement, researchers, and community representatives to discuss the issues.

Nature of the Task

Steven H. Rosenbaum

Chief, Special Litigation Section

Civil Rights Division, U.S. Department of Justice

Mr. Rosenbaum provided an overview of the nature of the task to be addressed by the Problem Solving Group. He said that the focus, in large part, will be on traffic stops and discrimination. DOJ wants all participants in the Group to share their views and to participate in the search for common ground.

Mr. Rosenbaum suggested two principles that may guide the discussion. "First, traffic stops and the resulting tickets and searches are a legitimate and effective law enforcement tool. Second, racial and ethnic discrimination in deciding who to stop, ticket, or search is wrong, both legally and morally." He emphasized that traffic stops and nondiscrimination are not at odds with one another; neither must be abandoned to accomplish the other.

Mr. Rosenbaum noted the wide range of discretion granted law enforcement officers in making stops, and said that the discussion would focus on how that discretion should be exercised, monitored, and controlled. Further, the Supreme Court has acknowledged that "even ordinary traffic stops entail a possibly unsettling show of authority." Mr. Rosenbaum added that "when that 'unsettling show of authority' is employed—or even perceived to be employed—on racial or ethnic lines, the respect for law and law enforcement is damaged. And an unfair burden is placed on law-abiding members of racial and ethnic minority groups." Mr. Rosenbaum encouraged discussion of two types of discriminatory traffic stops: highway stops based on racial profiling, often linked to drug interdiction programs; and stops in white urban or suburban areas aimed at harassing minorities and letting them know they are unwelcome.

After a full discussion of the nature of the problem, DOJ would like to hear about potential solutions, including training for law enforcement; the role of law enforcement

performance measures, policies, and procedures; and officer and community involvement in developing solutions.

Overview of Perspectives from the Field

Annette Sandberg, Chief, Washington State Patrol, provided a law enforcement perspective; Professor Jerome Skolnick, New York University Law School, offered comments from a theoretical viewpoint; and John Crew of the American Civil Liberties Union (ACLU) offered a civil rights perspective. (Hilary Shelton, Director, NAACP Washington Bureau, was scheduled to offer a community perspective but was unable to attend.)

Chief Sandberg said stops are extremely important and are used routinely to deploy officers in problem areas and for drug interdiction. "Stops are a legitimate tool," she said, "but we recognize there have been abuses. Supervisors and managers have a critical role to play in training officers and handling complaints. We need to maintain citizen confidence in policing, but police also need the tools to do their jobs. We look at each and every complaint critically, including how it is being dealt with if there is some racial component."

Dr. Skolnick emphasized that many police officers do use skin color as a criterion for making stops. "We have to accept that racial character and color are noticed by police," he said. "Police are also expected to know who belongs where." Dr. Skolnick referred to a term he had developed earlier—"symbolic assailant"—and said police must consider, for example, whether an elderly man waiting near an elementary school is a child's grandfather or a potential predator, or what a group of teenagers is doing in an expensive jewelry store.

"How can we deal with this social reality?" he asked. "First we need to develop statistics on race. We have some—for example, 82 percent of juveniles arrested for robbery are black—but is this because they commit more crimes, police arrest them more frequently, or both? Statistics in New Jersey driving cases show that disproportionately more black than white drivers are stopped. This suggests an unwritten policy authorizing police to mostly stop black drivers. Once guidelines are developed, they have to be monitored internally and externally. Finally, we need training from top to bottom, because this sends a message to officers about what is really important. We need to face the fact that race is a component of policing in America today—of everything today."

John Crew. Mr. Crew noted that many civil rights complaints concern drug-related highway stops and urban/suburban "border" or "out of place" stops, especially where black people are stopped for driving in white communities. "But another type of stop," he said, "which was discussed in the Christopher Commission report, occurs when a racial minority group is the majority in a particular neighborhood and assumptions are made about young men and what they may be involved in."

Some law enforcement agencies deny the existence of these problems—or there is institutional denial in the public arena at least—until civil rights activists call public attention to them. A starting point is to collect meaningful data. The data is a win-win for law enforcement. If it shows a relative lack of disparity, it can be used to combat a widespread public misperception. On the other hand, if it shows a significant disparity, law enforcement should want to have that data so it can attack the problem with training and other solutions. Perceptions that law enforcement treats the public unfairly will undermine police departments' ability to build community policing partnerships in minority communities."

Discussion: Discriminatory Profiling by Law Enforcement

Additional Perspectives from the Field

The first segment of this discussion involved six members of the problem solving group representing a law enforcement perspective. Their comments tended to fall into five categories:

- Types of discriminatory stops
- Data collection
- Discrimination and community policing
- Recruitment
- Changing police behavior

Types of Discriminatory Stops. With regard to urban/suburban "border" stops, one participant cautioned against broad generalizations, explaining that his officers make stops in target areas where most residents on both sides of the county-city border are black. These stops "have to do with crime, not race," he said.

Data Collection. Several participants said data on stops can help agencies develop training, solve problems, and show whether discriminatory stops are being made by only a few officers or by many. However, some participants expressed reservations about collecting data. One said "officers may feel they are being asked to discriminate even more by having to develop

profiles of those they stop." Another said that, because many stops are made for drug and gun interdiction purposes, studies need to look at where drugs are coming from and how they are being transported. "It is not enough to simply collect statistics on stops," he said.

Discrimination and Community Policing. Several participants emphasized that stops based on race foster distrust of the police and can hamper community policing. Comments included these:

Perceptions that law enforcement treats the public unfairly will deter police departments' ability to build community policing partnerships in minority communities.

People are negative because they don't believe the police. . . . The oppressive actions of some officers shape perceptions all around the country.

We need to focus on the amount of anger in our country from people of color, and a feeling of disenfranchisement in urban communities, not just among African Americans but among Latinos and Asians as well. This anger is driving some wedges between police and communities. . . . People of color are not participating in community policing as much as we would like, and race-based stops will hamper this.

One participant pointed out that, based on community policing outreach efforts, his department learned African American residents in drug- and gun-crime target areas wanted "a high visibility uniformed police presence doing traffic stops and making the community safer." Another said,

There is confusion in minority communities. Residents want crime reduced, but they also want a sense of respect. Not everyone of color needs to be stopped, searched, or treated disrespectfully."

Recruitment. Two participants noted that race-based stops contribute to departments' difficulties attracting officer candidates who are members of racial and ethnic minority groups. One said police "can't get young people of color to become law enforcement officers," especially when a department has a reputation both for making race-based stops and for unfair promotional practices. Another said it is important to focus not only on training, which often gets cut when budgets are tight, but also on recruiting, so that officers reflect the racial makeup of the community.

Changing Police Behavior. Several participants commented on the importance of strong policies, supervision, monitoring, and training for changing police behavior. One explained that

in his department, two complaints or one excessive force complaint against an officer in any two-month period results in a formal interview with management and review (in addition to reviews through customary investigative channels); that training is provided all officers who participate in traffic stops in drug- and gun-crime target areas; and that area commanders monitor the stops, which must be based on observable violations. Another stressed the importance of strong anti-discrimination policies:

Our focus should be on changing police behavior. . . . We need very strong policies about discriminatory practices, discriminatory stops, and race based policing. Training gives officers skills but it doesn't replace management and supervision. . . . We need a strong policy, clear data, and then training to change police behavior.

Others made these comments related to changing police organizational culture:

What we're talking about here is police culture. Police want to get the bad guys, and when they find some successes, they get into patterns, look for shortcuts, go back to the same haunts. . . . You also have to hold supervisors accountable. If you do, then the culture can start to change.

You have to ask how the police department fits into the community itself. I see racism across the board—in policing, in politics, in factories. If a police department tolerates racism, this will come back on the department. The department is a mirror of the community. What should be done with the small segment of officers that are racist? Training is important, but we need to include the officers in the process, not simply tell them "you will now learn to be diverse."

Summary of Perspectives from the Field: Remarks by Mark Moore

One way to frame the issue we are considering is to identify the important values that are at stake when policies governing stops are redesigned, and when racial characteristics are incorporated into policies that guide stops. Suppose there is a policy or procedure that tells which stops to make. One set of values clusters around the idea that, if police can use their authority and funding to make stops, violence and crime can be reduced. But there is another cluster of values: when we use government authority, it should be used fairly, particularly with regard to race and ethnicity. Americans weigh this second cluster of values quite heavily, believing this is what it means to be a good police department. Further, individuals have rights that must be considered in pursuit of law enforcement goals.

A series of prudential arguments were made. Participants agreed that a good relationship with the community is a strategic asset to a police department and to the justice system. We need the community's help. If citizens have no confidence in the police, they will not testify, serve on juries, or call when they have been victimized. Several participants also pointed out that we need their faith in order to be able to recruit from among them.

Often when we have two clusters of values (law enforcement effectiveness on one hand, and fairness and non-discrimination on the other, for example), we think we may need to make an important tradeoff between them. In some cases, this can be quite challenging.

Suppose, for example, we had a policy guiding traffic stops that was non-discriminatory on its face or was constitutionally authorized if it did use race. Suppose the policy were properly implemented and it operates as we intended. Despite this, the burden of stop and arrest still falls very heavily, although objectively, on the minority community. And despite all our arguments, it still feels discriminatory to the community most affected. Would we back off from that policy (which was effective and legal) in the interest of protecting a relationship with some members of the community? This seems to be an important strategic question. Do we have the right to ask police to do less effective enforcement in the interest of protecting these relationships? We must remember, the issue of tradeoffs only arises when choosing between technologies that are the best at achieving the two values.

In Prince George's County, Maryland, a new chief inherited a bad drug problem and a dissatisfied public. After analyzing drug and gun locations, stops were designed so they were surgically targeted and well executed. Further, the strategy was unique because the department took on outreach to the community, explaining the stops to residents beforehand, and also providing documents to those stopped explaining the strategy. The chief went the extra mile to legitimate his policies with the affected community even though he was on good legal and effectiveness grounds already. In this case, he worked hard to achieve all three values: law enforcement effectiveness, fairness, *and* community support.

Clarifying the Issues

This segment of the discussion included other members of the problem solving group and dealt with the following subtopics:

- Race and ethnicity as a proxy for criminality or suspicion

- Treatment of minorities who are stopped
- Potential uses and misuses of data collected on police stops
- Training and policy
- Hiring
- Questions about the effectiveness of stops

By the end of the session, there was considerable agreement that a broader discussion framework was needed; that the rationales for various types of stops and searches should be examined; and that these rationales should be weighed against goals for both crime reduction and improved police relationships with members of racial and ethnic minority groups.

Race and Ethnicity as a Proxy for Criminality or Suspicion. Several participants expressed concerns that a high number of people stopped and searched are not arrested or prosecuted because nothing illegal is found. Others commented on how this erodes trust and respect. For example:

The majority of stops are like this. It contributes to public unwillingness to trust police officers. This has to get our attention if we hope to get anything out of community policing.

It eats away at community confidence in law enforcement and affects [black children's] ability to respect themselves and trust authority figures.

One participant added that police officers rank high among professionals people trust, but in a recent Gallop poll, about two-thirds of African Americans and one-half of whites said African Americans are treated less fairly by police. Several others gave specific examples of "who is being stopped":

- African Americans, including those who are wealthy, stopped for simply "driving while black." Many have been stopped numerous times.
- African Americans, particularly young men, by virtue of their residence or presence in poor, high crime neighborhoods.
- Latinos living near U.S. border areas who are citizens or are trying to become permanent U.S. residents; other Latinos subjected to traffic and drug-related stops.
- White residents of rural areas who are stopped because of marijuana interdiction efforts, many of whose cultures historically have been hostile to law enforcement stops and other government intrusions.
- Teenagers and young adults of color who are subjected to "border stops" upon entering white neighborhoods.

One participant said, "The community of color has to be honest. There are disparities in criminal behavior . . . We do have a crime problem, despite the many reasons. But what do you do about that disparity, what do you do with the knowledge that you get a higher hit rate if you

stop blacks?" The speaker concluded that using race as a proxy for suspicion places too great a tax on innocent minority individuals.

Treatment of Minorities Who Are Stopped. Many participants said one of their greatest concerns was the lack of respect accorded minority persons who are stopped.

Comments included these:

Questions about fundamental fairness usually center around how we are treated.

[We are concerned about] the abusive manner on the part of law enforcement. . . People who meet the criteria are made to feel like criminals. We can solve these problems in ways that do not violate the civil rights of those in the Latino community.

People of color want crime reduced but feel police don't respect them or their children. . . Much anger exists regarding stops.

What are the values at stake? From our perspective, 1—respect, and 2—effective race relations. Who gets stopped? The perception is that it's young African American males. The second part is how people are treated once they're stopped, especially minority kids.

In addition, several African American participants recalled instructing their own children on how to conduct themselves when stopped by the police or when crossing urban/suburban boundaries.

Potential Use and Misuse of Data. A considerable portion of the discussion focused on data collection and on the potential use and misuse of statistics on police stops. Most who commented advocated strongly for collecting data, although a few participants were concerned for several different reasons. Some of the points made by advocates included these:

I don't see asking those stopped their race as a problem, police have been doing it for years.

Police need to use information to formulate law enforcement policies. Officers already record all types of information on people in field stops, including race. Why should we now say we shouldn't collect this during stops? I believe this will show overall that the police are not discriminating. Why are we so bent on not collecting anything, thus covering everyone with a discriminatory blanket?

The data is important, we ought to get a comfort level with it—it's almost malpractice for a police agency not to collect data on other things.

One speaker who commented on potential difficulties that data collection might present for law enforcement noted:

One problem with record keeping is the officer asking the driver his ethnicity. Should that be on the driver's license? We don't want to be like Nazi Germany; the ACLU needs to think about this. Police need help with how to collect data without creating more of a problem.

Training and Policy. Several participants expanded on the training issue raised earlier. One said:

The DEA does not teach profiling in any of its 100 schools. . . In fact, it teaches the opposite of profiling—if you use profiles, you miss the highway traffickers.

He said that, instead, a well trained officer makes a stop based on traffic law, then tries to determine if the person is also involved in criminal activity. "If not," he said, "they go on their way." Another participant recommended teaching officers the professional benefits of making stops correctly (e.g., be more effective, avoid lawsuits). Several speakers emphasized the importance of training on courtesy and professionalism.

One speaker expressed concern about policy emphasis on asset forfeiture:

When policy makers encourage forfeitures, most do not set out to deliberately violate the rights of minorities, but [police] have many incentives like new computers and cruisers. We must decide on what we value . . . so we can put the emphasis there.

Hiring. Several participants commented on the negative effects of race-based stops and workplace discrimination on departments' ability to attract minority officer candidates. For example:

The kids to whom I teach street law don't want to be police officers because of how officers treat them compared to how they treat residents of [wealthy, predominantly white neighborhoods].

People want the police to do something about this perception problem. I hope we see some police leadership in this area, as opposed to police response. We don't let other employers hire "efficiently" by excluding black candidates.

Effectiveness of Stops. Referring to Dr. Moore's summary of the values at stake, one participant said that in addition to fairness and due process,

Citizens want cops not to be afraid to do something . . . Criminals like the Oklahoma City bomber might still be at large if a cop hadn't stopped him.

Others questioned the effectiveness of various types of stops. Comments included:

These [city/suburbs border] stops are not getting at the serious crimes that are tearing up the country.

Is the person being stopped for a low-level traffic violation? A warrant? Because he is a known criminal? Because he fits a profile? How do you relate the pretext to the goal—that's the real issue here. . . There may be many costs in terms of resentment.

Finally, although these possibilities were not discussed at length, one participant said implementing a truly random system of making stops might be one way to achieve fairness; and another asked whether or not a better profile should be developed.

Luncheon Session

Remarks by Assistant Attorney General Bill Lann Lee

Stops and searches are legitimate tools that officers have and should have. But racial discrimination is wrong and cannot be used as a proxy for dangerousness. We have to strike the proper balance. Biased stops undermine residents' trust in the police and usually occur in communities that can least afford this. The Civil Rights Division has never had a stronger ally than Attorney General Reno—she challenges us to think outside the box.

Remarks by Attorney General Janet Reno

Harry Truman once said, "Doing what's right is easy—it's knowing what the right thing to do is that's hard." I've watched law enforcement at every level of government develop an excellence, a professionalism, and a can-do spirit. Ten years ago, we might not have come together to address the issue of race and law enforcement stops and searches. People would have said that the issue is too touchy to talk about. I have no doubt that the people here today have been able to talk through these issues in a productive way. We welcome the law enforcement professionals and the civil rights advocates here today.

Where should we begin? We recognize that traffic stops and searches are a vital tool for law enforcement and traffic safety. They are important for the interdiction of drugs and other contraband. The DEA has trained over 20,000 state and local officers on appropriate interdiction techniques—I saw the training and was impressed.

But there are so many misunderstandings. Young people tell me, "Why was I stopped? Stop picking on me." Traffic stops must be conducted in a fair and nondiscriminatory manner. So what can we do about it?

We believe that one answer is additional training. First, this training should include the legal parameters of stops and searches. Second, we must use creative methods to retain officers' interest. I found when I was State's Attorney in Dade County that videotapes for use at roll call can be a very effective training tool. Third, we should focus on the interaction between the police officer and the motorist; role playing on how to do it right versus the wrong way to do it can be very helpful in training officers in how to talk to people.

We need to get input from others outside the Department of Justice, as we are doing today. We can pull ideas from other policing initiatives. We also should consider what other management policies are needed to make sure stops and searches are carried out in a nondiscriminatory manner. But we should also consider whether we need more than just great policies. We need to ensure that those policies are implemented. We believe that data collection should be used to support our law enforcement policies, and we need to discuss what is the best way to accomplish this data collection.

This Department believes that cooperation and negotiation is better than litigation; I applaud Bill Lee's dispute resolution skills. Now I would like to ask you, if you were Attorney General, what would you be doing?

Discussion with the Attorney General

Audience members offered the following suggestions:

- Conduct more surveys in minority communities about residents' encounters with the police and how they think these could be improved.
- Encourage officers to sit down and talk with residents; town meetings are not enough.
- Provide access to the Civil Rights Division and Attorney General.
- Consider developing a model code delineating standards of behavior citizens can expect.

Ms. Reno provided her office's telephone number and said, "Also, it's a two-way street. Law enforcement needs access to information from community leaders."

One audience member expressed appreciation for the DOJ support for the Conyers bill and for the ongoing review of the DEA's Operation Pipeline training. "I recommend looking at

implicit messages, even in the absence of racial profiling," he said. Finally, he noted that the community may not trust the police complaint review process.

Ms. Reno replied, "I recognize obtaining current, accurate data is easier said than done. And the comment about implicit messages is well taken. There are only a few law suits that need to be filed to get the message across. My dream is that a dispute resolution course would be required of every teacher and every police officer so they can teach these skills to kids. People need to get together—the Chief of Police, the FBI, community organizations—*before* there is a problem, not wait until a crisis occurs."

Moving Toward Solutions

This dialogue involved the observers at the meeting as well as Problem Solving Group members. There was considerable discussion about the following:

- Need to disaggregate the problem
- Preventive strategies
- Policies
- Management and oversight responsibilities
- Topics for research

Need to Disaggregate the Problem. During the first half of the session, many participants continued to discuss the need to disaggregate the problem or define it more broadly. Some said the primary purpose of traffic stops is to deal with traffic safety, and that drug and gun interdiction is secondary. The following comment reflects that view:

If we do stops for the types of violations that cause crashes, then an officer can look further for probable cause. But there needs to be a legitimate traffic reason for stopping.

However, others said the issues were more complex ("We are not talking about just one kind of stop here." "We need to redefine the problem more broadly—it is not just about traffic stops." "The issue requires different strategies for different types of stops."). Strategies mentioned included police chiefs talking to residents about what they might give up in exchange for a greater police presence, and an "enhanced motor vehicle safety program" activated with community support as an immediate response to gang-related drive-by shootings.

Other participants emphasized that racism must not be ignored, fundamental rights must not be violated, and issues of trust must be addressed. Comments to this effect included these:

There is in fact a paradox faced by African American communities: they want protection but mistrust those who are to provide the safety.

A young black can drive a Mercedes and get stopped or an old car and get stopped.

Other gun and drug situations are more general [than the example given on traffic stops in the aftermath of drive-by shootings], where it is almost impossible to articulate a rationale except, "you're out of place." You just can't stop for that reason.

With regard to trading off people's rights for protection—for example, in the case of the Chicago Housing Authority—the courts have said you can't negotiate away people's rights.

We have alluded to situations where you are looking for a suspect and you don't have enough information beyond race, so you generalize and you stop the wrong people. How much information do you need before you start stopping people?

Preventive Strategies. Three main types of preventive approaches were discussed: (1) employing crime mapping to portray problem locations and help document the need for intensified enforcement actions, as well as data-driven "early warning systems" to identify problems with units or officers; (2) involving the community *before* implementing special enforcement strategies; and (3) ensuring that training and hiring practices reflect a strong commitment to eliminating discrimination.

Several participants criticized stop and search programs undertaken without community consent. For example:

Where does the notion come from that I have to give up a little bit of my rights in order to get protection? People in [high income neighborhoods] don't do that. It's like blaming the victim for the situation. We police with the consent of the people. . . . Bring me in on the discussion before developing the strategy, rather than asking after the fact.

Departments need to be seeking the community's permission instead of talking so much about partnerships.

One speaker who agreed community involvement was important also said stops in poor, minority neighborhoods may be justified because "residents have already given up rights like going out at night, or at least some kind of convenience," or because "wealthy people can afford private security but poor people can't." Others pointed out obstacles to community involvement and the use of monitoring systems, including:

- Difficulty getting consent from the young people affected by the problem

- Difficulty determining who the informal community leaders are
- Disparities in department resources (some cannot afford early warning systems or crime mapping).
- Disagreement among citizens about appropriate tactics (e.g., some oppose stops while others (including citizens in some minority neighborhoods) ask the police to make them).

Two specific programs were mentioned as having overcome some of these obstacles while generating few citizen complaints: the Prince George's County, Maryland, traffic stop program in high crime areas, and the National Highway Traffic Safety Administration (NHTSA) nationwide seatbelt initiative. Another effort noted was the ongoing development of citizen surveys by DOJ's Community Relations Service and the Criminal Justice Policy Foundation.

Other preventive strategies suggested were:

- Emphasize ethics in hiring practices, since police officer discretion is so critical
- Have officers work with community organizations as part of recruit training
- Provide special training to officers making stops in communities of color
- Consult with the NHTSA about public education and media coverage related to seat belt enforcement initiatives.

Policies. Although there was consensus on the importance of having strong policies that ban stops based on race, other policy issues were not resolved. Participants continued to ask:

What should the policies be, and how do we get these policies across to the rank and file?

Given that a large percentage of motorists violate the law, who do we stop and why do we stop them?

In addition, several participants emphasized that policy statements alone are not enough. For example:

Profiling is being taught in the media—blacks are more crime prone—and police pick up on it. You can have a policy, but the chief can't ride with every officer. We want to know what punishment will happen when an officer violates the policy.

Is racism alive and well in America? Yes. Racial profiling is a snapshot of institutional racism. At the academy, I got subtle and not so subtle messages about where I should police. This is still the case. [Regarding solutions], community involvement is a key. Law enforcement standards and training must be involved.

A range of other questions were raised or re-introduced in the context of their bearing on policy development. These included:

- If you don't have the data and mapping, how can you be responsive to your community?
- If police are already collecting data (from traffic tickets, reports on stops, etc.), what information should be provided to the intelligence or internal affairs unit?
- How can departments get away from measuring what officers do by relying on numbers and quotas?
- How will departments identify officers who should be disciplined?
- Given disparities in training, intuitiveness, and powers of observation, how can we be sure officers are interpreting the term "reasonable suspicion" correctly and consistently?
- Can we develop a model policy that includes (1) an emphasis on how people are to be treated once they have been stopped, (2) consequences for not adopting the policy?
- Can DOJ mandate that multi-jurisdictional task forces and other federal grantees require training of subgrantees before they receive funding?

Management and Oversight Responsibilities. There was consensus that police management must provide strong leadership and oversight. One participant expressed it this way:

Most police departments have good quality recruit and in-service training about how to conduct stops, but the anecdotal data is off the charts. There should be no officer who could stop only minorities and the supervisor not know it. Oversight is critical.

Other management responsibilities mentioned by various participants included:

- Develop more comprehensive plans for getting data.
- Ensure that ("unlike hate crime data") data on stops is collected and submitted.
- Make sure employee evaluations have "teeth" and are tied to performance.
- Focus on training first-line supervisors, certify the trainers, and consider other training recommendations made at a recent IACP conference.
- Where traffic safety is the goal, perform evaluations based on how officers deal with traffic problems, not just on the number of tickets they write.
- Promote changes in internal culture, with the chief leading this effort.
- Stop abuses of forfeiture laws.

Several participants raised concerns related to forfeiture, including "dash for cash," other "no-dope seizures," taking small amounts of cash from individuals, and a lack of forfeiture oversight. One said, "Many police departments and task forces that are doing stops don't write tickets if no dope is found, as that just slows them down." He also noted that forfeiture laws provide big financial incentives, and that many district attorneys in his area take cases to the DEA or FBI for forfeiture follow up. He continued:

DOJ can take some of the incentive out of that. . . . I'm not recommending to get rid of forfeiture but to improve the oversight of forfeiture. The bad cases could raise political questions about the use of forfeiture.

Topics for Research. Various participants mentioned the following:

- Inform the debate on disparity by race in drug dealer arrests (i.e., claims that fewer whites are arrested because "they don't deal on the streets," or "they don't use the drugs they sell").
- Conduct an examination of what law enforcement organizations are actually teaching about stops and searches.
- Conduct studies of pretext stops that examine the assumption, "it's worth it to stop many to catch a few."
- Develop methods for "how to evaluate the mass of stops to decide if discrimination is occurring."
- Conduct experiments on random stops.

Regarding random stops, one participant said police in New York City have had mixed results using random point stops, with some precincts receiving many community complaints and others seeing a significant decline in complaints.

In addition, the idea of "developing a better profile" was raised. There appeared to be some interest in the possibility of devising citizen-supported, limited-purpose, time-limited profiles; but the general notion of developing a better profile was largely rejected for several reasons:

- Race would still be an implicit, if not explicit, part of it.
- The data are lacking.
- Some segments of the population would still be, or would still feel, improperly targeted and disrespected.
- Law enforcement experience shows "the best profile is no profile." They are not useful for drug interdiction; organized criminals change their methods as soon as they become aware of a profile; and airport profiling systems have not been particularly effective.

Summary of the First Day's Discussion: Remarks by Mark Moore

In thinking about how to summarize the day's work, several questions came to mind: What subject have we been discussing? What values are at stake? What approaches can we use to solve problems? What can we do to legitimate and give standing to these approaches? How should we implement them? What types of statistics and performance measures are needed?

Participants tried many times to define the subject. One view of the problem is that there is a deep sense of alienation in minority communities. Particularly poignant was the testimony from African American law enforcement officials who encountered the problem of teaching their own children to get accustomed to unjustified stops. Contributing to the alienation might be the

inappropriate use of traffic stops—they feel arbitrary, discriminatory. Maybe we can't attribute the alienation solely to the stops, but they often exacerbate and symbolize the problem. We can't take up the whole problem of alienation today. Rather, we are looking at the narrower issue of traffic stops and searches. The subject, then, is to develop guidance for the police on traffic stops and their attendant searches, although some say this subject is too narrow, and some say all stops should be considered.

What would give the police guidance in making traffic stops? One way is use a profile. But there is a broader definition of a profile, which is an explicit written policy. A profile could be implicit or explicit in that written policy. It could be based on behaviors or characteristics over which individuals have no control. Conversely, a profile could have been carefully developed and tested. We could have constructed a profile based on data, or we could have just assumed we knew. The more it has been tested, the more legitimate the profile.

When a profile includes a racial characteristic, we could say the profile would be objectionable on its face. We could shift to such things as an old car or an accent, but those are racially connected and have no predictive or explanatory power, and are thus as objectionable as an explicit racial characteristic. If we had information that was correlated with race (not race itself), but the consequences of acting on that information would fall more heavily on one population, that population might say we don't believe you; we believe this is racially motivated, even though by your standards you're doing the right thing. This could happen even with a better profile.

In considering *law enforcement effectiveness*, there are many purposes for which police could use traffic stops: improve traffic safety, reduce the availability of drugs and guns, reduce violence associated with gangs, criminal apprehension. These appear to be important law enforcement functions. Some of these functions have been enormously aided by technology, speed guns, breathalyzers, video cameras. We can now do a more intensive and accurate search without being as intrusive. Apprehensions are also aided by technology. It is not clear that technology has helped much yet in drug and gun enforcement and violence prevention, but it is possible it could.

There are also *inappropriate* uses of traffic stop powers. Based on the discussion today, we could say these are (1) "border stops" (between suburbs and cities) and searches to protect the

homogeneity of neighborhoods; (2) stops made solely to get money or cars through forfeitures; and (3) stops made because officers are asserting their own biases.

One of our values is law enforcement effectiveness, but we should treat the effectiveness of traffic stops as something of an unknown. We don't know how big an effect they are having. Other values are related to community understanding and support. Policies that are lawful and constitutional are not enough. The issue is not simply whether or not the city likes a policy, but how it is accepted among the people on whom it is imposed. You could imagine police voluntarily doing less than the Constitution says they can do in the interest of developing better relationships with the community.

At least two main policy options emerge: (1) limit stops to enhancing traffic safety, and (2) construct a better profile. It may be possible to make a better profile that results in fewer errors of both types (false positives and false negatives), but there is technical work to be done. We should use only behavior, not characteristics, and we should specifically exclude race.

An alternative approach would be to construct limited profiles for limited purposes. What if we thought of traffic stops as we do wiretaps, where we have to get something like a warrant that states why we want to rely on an elevated level of traffic enforcement and who would be exposed to it? We could advertise it, which might have some deterrent effects. This would be consistent with problem solving. Use it, but only for those limited purposes.

What would we do with a policy if we had one? Check its constitutionality, check it against best practices. Again, you may not want to use every scrap of authority you have.

Participants also proposed several benchmarks from the efforts to reform police practice on deadly force and high speed chases. They emphasized the importance of training and supervision. But as one participant reminded us, you will also get from cops what's in their hearts, not just what's in the policies and procedures. This means that it is important to let cops work through these things in the training. Also, there were recommendations to identify and discipline the "bad apples," and to consider following discipline with training. Again, drawing from experience with deadly force and chases, external monitors are important.

Use of statistics and measurements were touched upon. One use of statistics is a national survey that asks: What is the nature of the problem? Are stops and searches creating a problem in the minority community? If so, how big and deep is the problem?

Another type of survey could help identify the policies and procedures now guiding police agencies. Statistics could be valuable for developing and testing some of the different profiles. Also, they could be helpful in developing information systems departments could use.

Remarks by Joseph E. Brann

Director, Office of Community Oriented Policing Services

Many of my personal views have been shaped by 26 years of law enforcement experience, but my perspective has changed over the past four years as COPS Office Director. I understand the comments about the need to disaggregate the issues. Police want to use profiles but must also be realistic about the abuses that have taken place. Thirty years ago I never heard the term *profiling* used to refer to a practice. Profiles had more to do with serial rapists and murderers; they were developed with help from forensic psychologists and were used by experienced investigators. Later, profiles were used at airports, then on highways. Profiling now—although usually done for good reasons—is often being done by inexperienced officers. Police are always seeking shortcuts, and there are dangers in that. Officers can slip into a lazy or haphazard work ethic; and race is the easiest shortcut of all. Training, individual experiences, and biases all influence officers, and it would be disingenuous to deny that race is a factor in police behaviors. Racism can be subtle or overt, and it can be condoned by an organization. I personally believe profiling can be a powerful and effective tool in many situations. But the problem is, it is too often used as a shortcut. This is complicated by the fact that officers operate under very little direct supervision. Also, we are sometimes unwilling or unable to keep on top of the changing data. Police also need training, but training does not get at the need for organizational change. We cannot let police stops lead to systemic mistreatment of minorities.

Community policing is a powerful tool for addressing these concerns, where the community holds police accountable, the police do outreach, and the police organization reflects the composition of the community. We can't train out bias, but we can build healthy organizations, and a closer relationship with the community can help overcome bias. It is easier to question or modify our programs than to challenge some of the practices that have evolved

over time from various tactics. We may be misapplying some of those practices today. The Attorney General said we have an opportunity to effect change without leaving the police organization hamstrung. The presence of so many organizations here and the level of discussion that has occurred are very important. Many of you have said it cannot stop here. We need to recreate opportunities for these discussions across the country.

Opening Session, Day Two

Sheldon Greenberg
Johns Hopkins University

Dr. Greenberg opened the discussion by listing the possible solutions mentioned on the first day. These included:

- Develop concrete standards and elevate police professionalism as it relates to traffic and other law enforcement stops.
- Develop a national model policy, even if it has to be broken down in various ways.
- Develop structured, announced, purpose-specific traffic stop programs.
- Consider random stop experiments as part of an overall research agenda.
- Increase and improve data collection efforts.
- Take advantage of the data that already exists.
- Obtain community approval before undertaking a law enforcement stop effort.
- Involve more of the constituents who have a stake in the subject (for example, police officers and troopers as well as citizens).
- Survey our communities. Focus on measuring citizen tolerance for law enforcement stops, especially in the communities most adversely affected by them.
- Assess both the subtle and direct messages we send our officers and troopers that profiling to seize assets is good and will be rewarded.
- Impose sanctions on officers who abuse forfeiture laws and make race-based stops.
- Change our system of evaluation so it does more than simply reward officers who make stops just to build up statistics.
- Hold more public discussions and meetings, especially for young people.
- Increase the monitoring of stops.
- Fund and make greater use of in-car video cameras.
- Require supervisors to randomly review videos, especially videos of officers who are known for doing a lot of profiling.
- Stop discussing profiling as a collective. The issues involve not only traffic stops but border stops, drug interdiction, blatant discrimination, stops that are agency supported and purpose specific, and profiles generated by individual officers who consider it the morally responsible thing to do for the greater good.

One member of the Problem Solving Group added several others:

- Cease pretext stops.

- Cease the use of race in profiles.
- Focus on successes (for example, officers who are making stops and not receiving complaints).
- Challenge others in the justice system, including prosecutors and judges, to be more responsible in confronting the police about the negatives they observe.
- Survey prosecutors and judges about what they hear, and get judges and prosecutors more involved in discussions.

Dr. Greenberg noted several themes emphasized during the first day, including ethics and integrity; the need to get various organizations involved in developing training on stops and searches; and the need to get the community involved. For the discussion on designing training strategies, he asked participants to consider training goals and expected outcomes, content, delivery, and how to assess the results of the training.

Discussion: Designing Training Strategies

Several members of the problem solving group offered comments on training content and delivery methods.

Training Content. One participant said that her agency policy requires that training developed on all high-risk, high-liability issues begin with a policy review; but for training on stops and searches, outside reviewers are used, including the local ACLU representative. Two others noted some of the training topics covered in their jurisdictions, including:

- Being alert for criminal activity, not just drugs.
- Officer safety.
- "Respect, courtesy and ownership," starting in the academy.
- The relationship between courtesy and officers' ability to be good crime fighters.
- What happens after the traffic stop, including how to handle persons who become angry (e.g., accuse an officer of racism).
- Techniques that reflect the shift from "911-driven to solution based programming" (such as having officers first give their name, organization, and reason for the stop, rather than demanding "license and registration").

Another participant pointed out that, even if officers are no longer trained to use racial profiles, citizens are still subject to their individual decisions, which may be "based on shortcuts of the past and other experiences that produced fruitful stops in terms of arrests." He questioned whether the focus should be on the types of officer behaviors that insult citizens, or on when to stop or not stop, noting that officers usually have probable cause to stop, but their demeanor is usually what fuels citizens' anger.

Mr. Rosenbaum agreed that most officers can justify their traffic stops on the basis of traffic violations, and said training has to "get beyond that level of discussion. . . . The discrimination issues we are looking at are not related to probable cause but to how the person is treated." Training and policy development efforts, he said, need to address these issues:

- Is there discrimination in terms of what minorities are being stopped for? Are minorities more likely to be subjected to the more discretionary stops (for example, stops for not using a turn signal)?
- What happens after the stop? When do you take a stop to the next level? This is where there may be discrimination problems if a high percentage of those who are asked for a consent search are minority.
- How can a training program be developed that addresses the potential for violent encounters? The Supreme Court has called traffic stops a "potentially unsettling show of authority." For the officer, there are legitimate safety issues involved, but police excessive force incidents often start as routine traffic incidents.

Training Methods. One participant said troopers want training to involve more role playing and videos; and they wanted volatile, race-related situations included as training scenarios. Another said current training sessions begin with an introduction by the chief, and supervisors are required to attend with officers. A third participant said misunderstandings can be avoided by training the chief and executive staff first, then moving down through the supervisory ranks and training officers last. Other techniques noted were requiring a written exam and involving officers in identifying performance and outcome measures.

Summary of Training Recommendations

The discussion on training was followed by small group work and a brief report-out session on recommendations for (a) training content, and (2) training delivery methods. Participants also submitted their handwritten notes, and the following list of recommendations is based on those notes. Although it is not possible to determine priorities from this process, items that received the greatest number of mentions were ethics, legal foundations and issues, departmental policy, consequences of law and policy violations, cultural sensitivity, respect and courtesy, officer safety, "after the stop" issues, conflict resolution, and internal cultural messages.

Several participants also recommended involving community members in the curriculum development process, as well as collaboration with various law enforcement training organizations, including IACP, NSA, NOBLE, PERF, IADLEST, IATA, and state POSTs.

Recommendations for Training Content

- Ethics—including integrity, truthfulness in reporting, truthfulness in stating reasons for stops, concept of informed community consent, reporting violations, law enforcement as public service, complaint process.
- Legal foundations and issues—Fourth and Fourteenth Amendments, statutory and case law, search and seizure, probable cause, reasonable suspicion, unlawful detentions, citizens' rights, immigration and other laws local police cannot enforce.
- Department policy—explanation of the policy, the rationale for it, its applicability to all levels; types of stops that are banned; how the agency will hold officers accountable, handle complaints, and measure success.
- Consequences of law and policy violations, including criminal and civil liability.
- Cultural sensitivity, diversity, race relations.
- How to incorporate respect, courtesy, code of conduct, and professionalism into initial approach while providing an explanation for the stop.
- Officer safety.
- What happens after the stop—a strong focus on race relations, respect, courtesy, professionalism; risk assessment; discretion in various stop situations; specific techniques to detect criminal activity; circumstances under which officers can/should conduct consent searches; use of informed consent forms.
- Conflict prevention, management, resolution (including how to disengage if you are wrong, diffusing tension, dealing with difficult people, managing personal stress, dealing with limited English speakers, handling accusations of racism and how to behave in a way to avoid such accusations).
- Internal cultural messages and "mindsets" (e.g., "code of silence," stereotypes about race/ethnicity and statistics that refute them).
- Data collection and analysis—what to record, how this will be subject to review, tracking officer patterns, tracking results of tactics.
- Rationale for the training (e.g., community concerns; also, an emphasis that training is not an accusation, "informative and sensitizing rather than remedial in nature").
- Basic communication skills (including information sharing with the public at large).
- Alternatives to stops—philosophy of no more intrusion than necessary, effectiveness/ineffectiveness of profiling.
- Perceptions of communities about racial profiling and resulting cynicism, illegality and resulting loss of court cases (suppression of evidence), litigation by plaintiffs and DOJ, loss of needed grant funding, loss of respect by large segments of their constituencies, leading to tense relations.
- "Dash for cash" issue—misuse of forfeiture laws.
- Stress management.
- Departmental complaint process (including how to explain it to citizens who indicate they want to file a complaint).

Content Recommendations Specifically for Executives and Managers

- How to take a complainant's issue and turn it into a positive.
- All aspects of traffic stops and criminal interdiction including policies, how to develop a policy, review of data—does profiling work, what issues are at stake?

- Emphasis on using crime mapping to identify problems.
- Involving the community in policy development, understanding how to engage the community in discussing traffic safety and crime reduction goals.
- Development of agency policy on and civil rights implications of officers' enforcement actions, and effective discipline for violations.
- How to improve professionalism in traffic enforcement.
- How to monitor/discipline for instances of police misconduct.

Content Recommendations Specifically for Supervisors

- Accountability measures.
- How to do counseling on sensitivity.
- How to monitor effectively.
- How to establish performance measures and share results with all stakeholders, including the community.
- Appropriate supervisory review in dealing with complaints arising from traffic stops.

Recommendations for Training Delivery

- Role playing, including role reversals (non-minority officer in role of person being stopped).
- Videos, interactive videos (including scenes where stopping officer is accused of racism, officer apologizes for a wrongful stop, situations that have positive outcomes).
- Case studies, especially real cases from department or DOJ Civil Rights Division.
- Bringing young people in to discuss how they view police practices; using other community members as volunteers or paid participants.
- Roll call refreshers (including use of videos for roll call training).
- Having recruits work in civilian clothes in the community (e.g., as a cooperative effort with the Urban League).
- Use of certified trainers only.
- Use of trainers who represent various cultures.
- Continual training reinforcement/refreshers, especially for officers working in target areas.

Discussion: Other Participant Suggestions

This session involved small group work, with participants brainstorming the broader issues that need to be addressed, including the role of the government. This was followed by a brief report-out. Again, participant notes were submitted and were used to compile this section of the report. In some instances, participants made suggestions that could not be carried out within the authority of the Department of Justice. However, there was not enough time during this session to discuss more specifically how the suggestions might be implemented, or to discuss the authority under which various agencies (within and outside of DOJ) might proceed.

Model Policy Development

A significant number of participants wanted to see national standards or a model policy developed on conducting law enforcement stops and searches. Several said the IACP, other police organizations, and civil rights groups should be involved in developing such a policy, and that it should include a strong message that discrimination will not be tolerated. One participant said a model process for monitoring such a policy should also be developed.

Training

Many participants made suggestions for training development and for various types of federal support related to training. Several emphasized that many different law enforcement training and membership organizations should be involved in the training development process, and that a model training curriculum should include modules for managers and supervisors, not just line officers. Several participants stressed a need for review and comment by various citizen groups as part of the curriculum development process, and others emphasized "in-service sensitivity training" and "civil rights training for law enforcement officers and managers."

The vast majority of participants did not specify which federal agency or agencies they thought should spearhead curriculum development at the national level; however, one suggested DOJ consider having DEA "collaborate with IACP to develop a training curriculum and certification process for roadside criminal interdiction." One participant suggested DOJ play a "train the trainers" role and also "take the lead by supporting national training goals." Another recommended that DOJ "require through the Byrne Grants a federal presence on committees that determine where the money is going" to help ensure that training on law enforcement stops and searches is delivered. In terms of specific training products, suggestions were made to develop a roll call tape and an interactive video on CD-ROM with some form of DOJ support. Another recommendation was to consider offering matching grants for video cameras and the related training required to use them.

Several participants' suggestions reflected concerns about the quality and effectiveness of training related to law enforcement stops and searches. They said, for example, that there should be "a continual review of training programs, a "review of local and state training programs on drug interdiction for any race references, implicit or explicit," state-level certification of

curricula on stops and searches as well as certification of trainers, and "research and evaluation on the impact of training." However, as noted earlier, this was a brainstorming session and most participants did not indicate which agencies or organizations they thought might appropriately conduct the recommended reviews, or which agencies would be authorized to do so.

Finally, suggestions included several approaches DOJ might take to help ensure a model training curriculum on law enforcement stops and searches is delivered. These included adding training mandates to existing grants to state planning agencies; making grants to individual communities and providing technical support to implement the training; nationally marketing the training and encouraging local political leaders to support it; and "using its pattern and practice authority to deal with problem agencies that do not respond to training."

Leadership, Advocacy

Many participants' suggestions were related to DOJ playing a strong leadership role in advocating against discriminatory stops and searches. Suggestions included providing "greater funding, energy, and publicity for pattern and practice cases" by taking a "road show" out to explain DOJ pattern and practice authority and possible results; using DOJ's authority as leverage to negotiate; and following through and removing federal funding when discrimination is found. Several participants suggested using as a model the successful DOJ efforts made to increase awareness of and combat sexual harassment.

Other suggestions were to encourage open, honest discussion of the issues by sponsoring national and regional forums across the country (including some forums geared to small cities); broaden the problem statement beyond law enforcement traffic stops and searches; and provide strong leadership in "proactive prevention" and "the integration of research results into policy."

Data Collection, Research, and Evaluation

Participants offered several additional suggestions for DOJ related to data collection, research, and evaluation: collect and distribute ideas for data collection and best practices; collect the data where there is a multi-agency task force with a federal presence (e.g., DEA); and sponsor research and evaluation efforts to identify alternatives to profiling traffic stops that would be cost effective without having a negative impact on race relations.

Closing Remarks: Raymond C. Fisher

Associate Attorney General

The issues discussed here are very important to the Department of Justice and the Attorney General, as are the experiences and viewpoints of police, civil rights, and community representatives. We are willing to listen to critical comment about what we do.

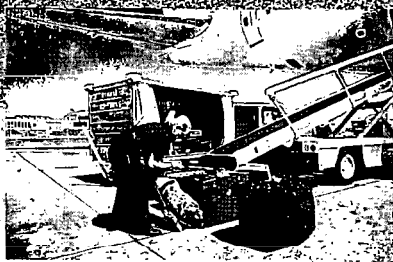
The Rodney King tape and the Christopher Commission investigation provided lessons not only to Los Angeles but to law enforcement around the world. I am sensitive to and aware of what these types of confrontations mean. Recently, for example, there have been complaints in Los Angeles about "driving while black"—this is a persistent issue. It is important that legitimate techniques of law enforcement be used to combat drug trafficking. We want these techniques available, but we don't want them abused. Any confrontation or encounter with an officer can be scary. A model code alone would be a major stride forward, with an emphasis on individual officers' courtesy. We need to listen to the comments made about parents who are members of racial and ethnic minority groups preparing their sons for police stops, but we also have to attend to allegations that large numbers of officers' enthusiasm for law enforcement was chilled by the Rodney King incident and subsequent hands-off policies. Several years after the Rodney King beating, the Los Angeles mayor questioned the police chief about allegations that officers feared retribution from Internal Affairs and thus were not making as many arrests or enforcing traffic laws. One area of Los Angeles had commissioned a study of traffic stops. The data showed some truth on both sides, but the fear was not as extreme as suggested by media coverage and anecdotes from police managers.

We therefore commend the notion that we need to pursue some form of empirical data collection so we can better ascertain what is really going on in the field. It can be hard to collect data when a stop is made at three in the morning—we are sensitive to that. Even so, having empirical data to refute myths or support allegations is a very important step. Also, training is extremely important, and DOJ can make a positive contribution to support high quality training. I've spoken at roll calls and have seen the eyelids drop, but there are ways to communicate effectively through roll call training.

Overall, police officers are trying to do a good job—they are just people like us—but clearly some get carried away or don't know the proper techniques. Performance measures,

then, are also very important. For example, the LAPD was driven by arrest statistics at one time. We have to be careful not to create incentives for cops to do the wrong thing. And community involvement means more than involving only citizens invited to be part of a precinct commander's inner sanctum, or civil rights advocates. Their participation is important, but there are many others who don't go to meetings or don't participate in other ways. Police need to go to homeowners' meetings, meetings at schools, and other forums out in communities. Anecdotal information—but useful information—comes out of these efforts. Police must also communicate a professional, courteous attitude. As managers, we have to set the standards and clearly state what's right and what's wrong. If we treat everyone with respect, many of these problems can be addressed.

This Attorney General and this Justice Department do listen and follow up. Our next step is for us to carefully review what you have suggested here.



WHAT IS THE MISSION OF THE CUSTOMS SERVICE?

*We are the guardians of
our Nation's borders —
America's frontline. We
serve and protect the
American public with
integrity, innovation and
pride.*

*We enforce the laws of the
United States, safeguard
the revenue, and foster
lawful international
trade and travel.*



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Publication Control #0000-0103



PASSENGER INFORMATION



WHY
DID
THIS
HAPPEN
TO ME?

U.S. CUSTOMS SERVICE



WHY DOES THE CUSTOMS SERVICE SEARCH PASSENGERS?

Customs officers must stop contraband, such as narcotics (drugs), from entering the United States. The narcotics are often found in cargo, but they are also found on passengers or in their baggage. Sometimes people swallow narcotics or insert them in their bodies to hide them.

The only way to be sure of finding narcotics that are hidden in baggage is to open the bags and examine them thoroughly. The only way to find narcotics hidden on or inside a person is to do a personal search of the person's clothing and body.

HOW DO OFFICERS DECIDE WHICH PASSENGERS TO EXAMINE?

When a Customs officer stops a passenger, it doesn't mean the person is accused of committing a crime. The examination process is a way to confirm the passenger's U.S. Customs declaration and to allow innocent passengers to continue on their way as quickly as possible. Customs officers receive regular training in methods of identifying passengers who may be smugglers. In addition, through on-the-job experience, Customs officers have acquired knowledge and expertise in detecting smugglers in action.

Officers are often looking for narcotics when they choose passengers for examination. This may result in having to undergo a personal search.

DID I FIT THE PROFILE OF A SMUGGLER?

If all smugglers shared the same characteristics, it would be easy to identify them. Smugglers, however, are continually adapting their ways of bringing contraband into the U.S. Since all cases of smuggling vary, there is no "profile" of a smuggler.

The Customs Service does not tolerate discrimination. Customs officers are not permitted to use race, gender, religion, or ethnic background to select a passenger for examination.

HOW MUCH AUTHORITY DO OFFICERS HAVE TO CARRY OUT EXAMINATIONS?

Customs officers have been given special authority by federal statutes and court decisions. The United States Congress and the courts recognize the extreme importance of protecting the United States from narcotics. Officers may examine all conveyances (car, boat, airplane), all persons and their baggage, and all cargo entering the United States. They may also conduct personal searches of passengers.

WHY AREN'T ALL PASSENGERS EXAMINED?

Our aim is to make our Customs officers highly professional at finding smugglers. Although officers have the authority to examine everyone and everything entering the U.S., there are two reasons why they don't. First, most passengers entering the U.S. are law-abiding travelers. Second, Customs resources are limited. Therefore, Customs officers concentrate on finding the few passengers who are breaking the law. So, for most people entering the U.S. there is little or no examination.

WHAT CAN I DO IF I THINK THE EXAMINATION WAS NOT CONDUCTED IN A PROFESSIONAL MANNER?

If you are still in our facility while you read this, ask to speak with a supervisor immediately. Customs supervisors are responsible for ensuring that officers behave in a professional manner and treat all persons with dignity.

This facility may also employ a Customs Passenger Service Representative (PSR). The PSR is a supervisor specifically assigned to handle any concerns or questions you may have. Go to the Customs office and ask if there is a PSR.

If you have left the Customs facility, we still want to hear from you. You may write directly to Customs Headquarters. We will review your comments and respond in writing in a timely manner. If you provide your daytime phone number, we will also contact you directly.

Director, Passenger Operations
U.S. Customs Service
1300 Pennsylvania Avenue, N.W.
Room 5.4D
Washington, D.C. 20229

Or visit our Web site at
<http://www.customs.ustreas.gov>

'Racial Profiling' Doesn't Prove Cops Are Racist

By JACKSON TOBY

Late last month, New Jersey Gov. Christine Todd Whitman forced the resignation of Col. Carl A. Williams, superintendent of the New Jersey State Police, for "insensitivity" because of remarks he had made in a newspaper interview. In replying to accusations that the state police targeted black motorists for traffic stops on the New Jersey Turnpike, Col. Williams had insisted that there was no racial profiling and that stops were made only "on the basis of a traffic violation."

However, he also was quoted by the Newark Star-Ledger as saying that certain crimes were associated with certain ethnic groups and that it would be naive to think that race was not an issue in drug trafficking. "Two weeks ago," Mr. Williams reportedly said, "the president of the United States went to Mexico to talk . . . about drugs. He didn't go to Ireland. He didn't go to England."

Responding to that statement, a group of black state legislators, ministers and civil-rights advocates gathered to denounce Col. Williams as a racist. "His views are dastardly," said New Jersey Assemblyman Leroy J. Jones Jr. "He's unfit to hold such a critical, important office." Mr. Williams was dismissed hours later.

The Williams comments, along with the New York City police killing of Amadou Diallo, an unarmed black man, have contributed to the impression of widespread police racism. But neither Mr. Williams nor the officers involved in the Diallo shooting had to be racist to say or do what they did. A little perspective is in order here.

Begin with one of the most important ideas in modern criminology, and one that has revolutionized police practice—the belief that a good way to prevent robberies, murders and other serious felonies is to go after minor offenses. Thus, when William J. Bratton was chief of the Transit Police in New York City a decade ago, part of his strategy for controlling violence in the subway system was to order his officers to crack down on small infractions—fare beating, panhandling, graffiti, smoking, boisterous behavior.

Within two years of the policy's adoption, the number of felonies in the subway declined by more than 30%. Why? Well, one out of every six fare evaders stopped by the Transit Police in 1991 either was carrying a weapon or was wanted for another crime on an outstanding warrant. By paying attention to behavior that most people regard as not worth bothering about, the Transit Police prevented some violent crimes on the subways.

The same principle applies to drug traffickers on the highways: People who violate major laws are probably also inclined to violate minor ones, such as traffic regulations. Consequently, stopping motorists for traffic violations has led to the seizure of major shipments of illegal drugs to Newark or New York—and even to the ap-

prehension of a wanted murderer. The Oklahoma City bombing might have gone unpunished had the Perry, Okla., police not stopped Timothy McVeigh because he did not have a license plate on his pickup truck.

There is, of course, a civil-liberties cost to enlarging the police net. Cracking down on fare beaters on the New York City subways snared (and embarrassed) passengers in a great hurry to get to appointments. Similarly, although the police have caught major drug traffickers by searching the vehicles of motorists stopped for traffic offenses on the New Jersey Turnpike, their success is counterbalanced by unsuccessful but intrusive vehicle searches of otherwise respectable citizens who made an illegal turn or drove faster than the speed limit. And a disproportionate number of those stopped were black or Hispanic. According to a survey sponsored by the New Jersey Office of the Public Defender, blacks accounted for 13% of drivers on the south end of the New Jersey Turnpike, 15% of speeders and 35% of those stopped by the state police.

Is this evidence of police racism? Not necessarily. True, most blacks and Hispanics are law-abiding. But if drug traffickers are disproportionately black or Hispanic, the police don't need to be racist to stop many minority motorists; they simply have to be efficient in targeting potential drug traffickers. It is an unfortunate fact that much higher proportions of black children than white grow up at a social disadvantage and are more tempted to break society's rules. Thus, although blacks are only 12% of the American population, in a recent year they comprised 56% of the ar-



Col. Williams

rests for murder, 42% of the arrests for rape, 61% of the arrests for robbery, 39% of the arrests for aggravated assault, 31% of the arrests for burglary, 33% of the arrests for larceny and 40% of the arrests for motor vehicle theft. Also 46% of state prison inmates—i.e., those actually convicted of crimes—were black (another 17% were Hispanic). Why should they not be equally overrepresented in drug trafficking, which is less easy to measure statistically?

Some police officers are no doubt racists and some are guilty of misconduct. But it is dangerous to make public policy on the basis of such horrible examples as the Amadou Diallo shooting. All professionals make mistakes: Surgeons operate on the wrong kidney; lawyers botch cross-examinations. Fairness requires that mistakes be looked at in the context of the more numerous examples of good judgment.

But the police deserve extra leeway for their mistakes because, unlike other professionals, they don't have the luxury of turning down unpleasant cases. They make house calls despite personal danger. They have to deal with not only criminals, but also paranoid schizophrenics who have not taken their medication or suicidal people. The police come and do their best because the buck stops with them. Usually they succeed; occasionally, and sometimes tragically, they fail.

So should the New York City Police Department be convicted of racism? And should Mr. Williams have been fired as superintendent of the New Jersey State Police? Not in my opinion. True, the police in the Diallo case should have used better judgment, and Mr. Williams could have tiptoed more gently over the unpleasant reality that interdicting drug shipments on the New Jersey Turnpike requires stopping more black than white motorists. But he was defending his officers against what he considered a bum rap: that they were racists. By a wide margin, they are not.

Mr. Toby, a professor of sociology at Rutgers University, was director of the Institute for Criminological Research at Rutgers from 1969 to 1994.

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HEADLINE: Dispelling New York's Latest Fear

BYLINE: By William J. Bratton; William J. Bratton was New York City Police Commissioner from 1994 to 1996.

BODY:

There was a crisis of fear in New York City in the early 1990's, and for good reason. Annual totals of 2,000 homicides, 6,000 shootings and 100,000 robberies are enough to frighten anyone. Residents had little confidence in the ability of the police to control and reduce violence, especially in minority neighborhoods.

But from 1994 on, the Police Department changed the reality and the perception. The department replaced what had been an uncoordinated, scattershot enforcement effort with focused strategic plans. In the 1990's, felony crimes have been cut in half, homicides reduced by nearly 70 percent, and order has been largely restored. The crisis of fear about crime is over.

But now we know that New York is facing a different crisis of fear. Though minority communities have benefited enormously from reduced crime, they now see themselves as under attack by the police. The tragic shooting of Amadou Diallo has become a rallying point for general resentment about aggressive police stops and searches.

People are worried that they themselves -- and particularly their teen-age sons -- are at risk, but from cops. They are not feeling the benefit of safer streets.

Although we can't know for certain until all the facts are in, the Diallo shooting appears to have been an error committed by fallible human beings. It is beyond imagining that these officers gunned down an innocent man intentionally. The New York Police Department shows more restraint in the use of force than do Federal enforcement agencies and most other big-city police departments.

But all that is irrelevant to the current crisis of fear. People are often afraid of crime out of proportion to its reality, so it should not be surprising that they fear police abuse out of proportion to its reality.

The challenge for the city government and the Police Department is not to prove frightened people wrong. It is to make visible and effective changes that ease their fears and restore their confidence in the police. The department can combine several strategies to find a way out of this crisis of fear.

The first strategy is openness. A police organization that willfully shuts itself off from scrutiny and public exposure can lose public trust. The role

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of police power in a democracy should be the expression of social consensus. But how can a consensus be reached if the Police Department, responding to orders from above, routinely withholds information from the state comptroller and the public advocate as well as from the press and public?

When I was New York City's Police Commissioner from 1994 to the spring of 1996, I tried to run an open department. But Mayor Rudolph Giuliani closed down this effort. He forbade "ride alongs," in which the public or press accompany patrolling police officers. He also dismantled the department's public information staff because its officials were too free with information, and he questioned the loyalty of anyone who didn't speak from a prepared script.

Things have gotten even worse. The concrete barriers around City Hall and Police Plaza that were erected last year send the wrong message. If you don't want your Police Department to appear as an occupying army, you shouldn't run the city from a fort.

The second strategy is outreach and recruitment in minority communities, so that the police will look more like the city they serve. It was one of my continuing frustrations as Police Commissioner that I could never get the money to start a youth career program that would have significantly increased the college-educated minority representation in the department.

I was drawn to policing at a very early age, and I believe that many minority youths could be, too, if the effort were made to interest them during their high school and post-high school years. The program would have begun with our existing summer youth academy for 12-to-14-year-olds and continued on through a proposed public safety high school and all the way to the City College system.

This would have fostered friendlier relationships between young people and the police. It would also have provided focus, direction and mentoring to teen-agers, while simultaneously giving the Police Department a stronger field of potential candidates to choose from. Unfortunately, the idea was not allowed to go forward. Even an expansion of existing cadet programs, which were 70 percent minority, was stopped, despite the recommendations of the department and of experts at John Jay College.

The third strategy is imaginative police training. I believe that expanding the department at this time would be a mistake. Instead, resources should be used more wisely to raise the pay of the officers we have, to attract the best qualified new candidates and to create a "learning organization" that continuously and tirelessly trains them throughout their careers for the challenges and complexities they face on the streets.

The Police Academy must be given the resources to establish itself as a center of leading-edge ideas and reality-based training. It should put into practice many of the recommendations made by the panel on police-community relations appointed by the Mayor in 1997.

There is no more difficult challenge in a free society than the legitimate exercise of force. There are thousands of police officers in the department who meet that challenge every day with extraordinary discretion, judgment and intelligence. It's up to the department and the city to support them with open lines of communication to the public, a genuine commitment to minority recruitment and the best and most sophisticated training.

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New York City should not waste this opportunity -- and, yes, the current crisis should be viewed as an opportunity -- to face up to and resolve the issue of relations between the police and minority residents. With crime down so dramatically, we have a chance to forge a lasting alliance in the communities that need the police the most. Not only would such an alliance heal racial divisions in our city, it would also give New Yorkers more of what they want: continued success in reducing crime and a police force that is better woven into the fabric of city life.

LANGUAGE: ENGLISH

LOAD-DATE: February 28, 1999

China's Human Rights Record

A disturbing pattern is developing in the Clinton Administration's relationship with China. The more Washington seeks to broaden its agenda with Beijing, the more harshly China treats its democrats and dissidents. In the face of a new wave of political repression in China, President Clinton and Secretary of State Madeleine Albright must do more than repeat stale complaints and then change the subject to trade. Americans will not support a policy of engagement and improved relations with China if the price is American inaction on human rights abuses.

Ms. Albright traveled to China this week just days after the State Department published a withering report on repression in China. It found that in 1998 Chinese leaders broke their promises to respect international human rights conventions, held thousands of political critics and religious activists in prison, tortured detainees and tightened restrictions on the press. Beijing has been using long prison sentences to crush the formation of independent political parties.

Ms. Albright talked bluntly about the dismal record in her meetings with Chinese officials yesterday, as she has done before. That seemed sufficient when China's conduct was improving, but as President Jiang Zemin has tightened controls on political expression in recent months, the American criticism has seemed increasingly hollow and ineffectual. Ms. Albright's words were further muffled by the primary purpose of her visit, which was to advance the Administration's policy of building diplomatic links with China, specifically by advancing Beijing's entry into the World Trade Organization and preparing for a smooth visit to Washington next month by China's Prime Minister, Zhu Rongji.

Washington can act more forcefully on human rights by sponsoring a new United Nations resolution on Chinese abuses in Geneva later this month. Last year, for the first time since 1991, the United States did not support a resolution condemning China before the U.N. human rights commission in Geneva. The Administration hoped that this gesture would encourage Beijing to ease political repression. American silence on the issue this year would be unconscionable.

Mr. Jiang and his fellow Communist leaders fear social unrest. As economic growth has diminished because of Asia's financial crisis and Beijing's own incomplete economic reforms, political protests have spread and the Government has tried to intimidate those who favor greater freedom and democracy. But as President Clinton noted last week, sooner or later China will have to realize that it "cannot purchase stability at the expense of freedom."

If the repression grows worse in the weeks ahead, the Administration may have to reconsider its commitment not to link China's admission to the World Trade Organization to its human rights performance. For now, the membership decision will depend on Beijing's willingness to lower tariffs to international standards. Concerned that too rapid an exposure to free trade will increase Chinese unemployment and unrest, Beijing wants an extended transition period. Some accommodation is reasonable. But the point of admitting China into the W.T.O. is to bring it more fully under the rules of the international trading system. Excessively watering down those rules to have an agreement ready in time for Mr. Zhu's visit to Washington would be a mistake.

Racial Attitudes in Jersey's State Police

New Jersey's Governor, Christine Todd Whitman, did the right thing in dismissing Col. Carl Williams as superintendent of the state police because of comments he made in an interview with *The Star-Ledger* of Newark. Colonel Williams had asserted that certain crimes were associated with certain races, and he specifically linked minorities with drug trafficking. His remarks betrayed pernicious racial stereotyping that cannot be allowed to guide a police force that must deal fairly with all members of a diverse society.

Beyond that, the comments provided new insight into the possibility that racial profiling, or the tendency to stop drivers of certain races and skin colors as potential lawbreakers, may be deeply rooted in the police agency. Although Colonel Williams insisted in the *Star-Ledger* interview that racial profiling would not be condoned, his comments associating crimes with particular racial groups sent the opposite message. Coming from a 35-year veteran who rose through the ranks to lead the 2,700-member force, the remarks suggested that such attitudes may be endemic. In appointing a successor to Colonel Williams, Mrs. Whitman needs to find one who will make a personal commitment to root out all traces of racial stereotyping in the state police and eliminate all individuals in command positions who harbor such attitudes.

For years minority communities have complained that New Jersey troopers target black and Hispanic drivers for unwarranted stops and search-

es in trying to make drug arrests. The charges, though denied by police officials, are the subject of multiple investigations. A grand jury is looking into an incident in which troopers fired on four unarmed minority men who were traveling in a van to a basketball clinic last April, and both the State Attorney General's office and the Federal Department of Justice's civil rights division are investigating race-based traffic stops in New Jersey.

In 1996 a Gloucester County judge ruled that state troopers used illegal profiling along the southern end of the New Jersey Turnpike. Evidence in that case showed that while 13.5 percent of the motorists on that stretch of highway were black, 46 percent of those stopped by the police were black. More recent data collected by *The Star-Ledger* found that in the first two months of 1997, fully 75 percent of the motorists arrested on the Turnpike were minorities. Several former and current troopers have filed lawsuits charging racial discrimination in the agency and alleging that racial profiling is encouraged as a way to get arrest numbers up.

Anger at the situation has prompted some minority leaders to criticize Attorney General Peter Verniero, who has recently been nominated by Governor Whitman to the State Supreme Court, for failing to act forcefully on the matter. Mrs. Whitman can help ease tensions by making sure her next choice for superintendent takes all steps required to restore public confidence in a police force whose fair-mindedness is under challenge.

The New York Times

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